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ABSTRACT

This hearing on the Nutrition Labeling and Education Act of 1989, S. 1425, which requires mandatory nutrition labels on all food products regulated by the Food and Drug Administration, covered specific details on labeling procedures which will enable consumers to make intelligent choices on food selection. Prepared statements are included from associations representing health-related concerns, e.g., the American Cancer Society and the American Heart Association. Statements are also included from food industry representatives, e.g., Grocery Manufacturers of America and the Milk Industry Foundation. Additional supporting materials include articles, publications, and letters. (JD)

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S. HRG. 101-488

NUTRITION LABELING AND EDUCATION ACT OF 1989

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 1425

ENTITLED THE "NUTRITION LABELING AND EDUCATION ACT OF 1989"

NOVEMBER 13, 1989

Printed for the use of the Committee on Labor and Human Resources

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NUTRITION LABELING AND EDUCATION ACT OF 1989

MONDAY, NOVEMBER 13, 1989

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:37 a.m., in room SD-430, Dirksen Senate Office Building, Senator Howard M. Metzenbaum, presiding.

Present: Senators Metzenbaum and Hatch.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. The committee will come to order.

We are here this morning to consider legislation which is long overdue. S. 1425, the Nutrition Labeling and Education Act, will take the food label out of the 1960's and put it into the 1990's.

This bill will provide consumers with the information that they need to make choices about their diet and their health, because when it comes to nutrition, what you don't know can hurt you.

Consumers are fed up with food labels that are at best confusing and at worst downright deceptive. They are tired of being taken in by bait and switch claims that mislead and misinform.

Consumers aren't asking for much, and I believe this bill provides the answers to the questions they are asking every day. The basic questions, plain and simple, are: What are we getting? How many calories? How much fat? What kind of fat? How much salt and sugar? How much cholesterol and protein and vitamins and fiber?

These are fair questions. They deserve straightforward answers. Unfortunately, much of what we are getting is marketing hype. Our supermarket shelves are practically screaming at us: "Light", "lean", "less", "lower", "higher", "fewer", "no fat", "no salt", "no cholesterol", or "high fiber". Too often, I am afraid, we are only getting part of the story. We are told what they want us to know, but not what we need to know.

Since Chairman Henry Waxman and I introduced our joint legislation earlier this year, a good deal of action has occurred on this issue. The Food and Drug Administration has begun to hold public hearings on nutrition labeling, and I commend them for that. Congressman Waxman has reported an amended bill out of his subcommittee. My good friend from Utah has introduced his own nutrition labeling bill, which I have carefully reviewed, but after weeks of tortured decisionmaking and soul-searching, I have concluded that I like my bill better.

Finally, I have drafted a substitute amendment to S. 1425 which we have distributed here today. The substitute reflects some of the changes incorporated in the House bill as well as some adjustments which have resulted from continuing discussions with both industry and consumer groups.

Before I turn to the ranking minority member, whose timing is perfect, I want to compliment him on the fine work he has done this year on our committee. Senator Hatch has been the key to bipartisan agreements on vitally important issues such as the Americans with Disabilities Act, the Act for Better Child Care, and the FDA Revitalization Act.

[The text of S. 1425 follows:]

101st CONGRESS
1st Session

S. 1425

Entitled the "Nutrition Labeling and Education Act of 1989".

IN THE SENATE OF THE UNITED STATES

July 27 (legislative day, January 3), 1989

Mr. Metzenbaum (for himself and Mr. Chafee) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

A BILL

Entitled the "Nutrition Labeling and Education Act of 1989".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, REFERENCE.

(a) Short Title.—This Act may be cited as the "Nutrition Labeling and Education Act of 1989".

(b) Reference.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

SEC. 2. NUTRITION LABELING.

(a) LABELING REQUIREMENT.—Section 403 (21 U.S.C. 343) is amended by adding at the end the following new paragraph:

"(q)(1) Except as provided in paragraphs (3) and (4), if it is intended for human consumption and is offered for sale, unless its label or labeling states—

"(A)(ii) the serving size which is an amount customarily consumed and which is expressed in a common household measure that is appropriate to the food, or

"(ii) if the use of the food is not typically expressed in a serving size, the other unit of measure which is an amount customarily used as an ingredient in the preparation of a food and which is expressed in a common household measure that is appropriate to the food;

"(B) the number of servings or other units of measure per container;

"(C) the number of calories—

"(i) per serving size or other unit of measure,

"(ii) derived from the total fat in each serving size or other unit of measure of the food, and

"(iii) derived from the saturated fat in each serving size or other unit of measure of the food; and

"(D) the amount of total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, total protein, and dietary fiber contained in each serving size or other unit of measure.

"(2) If the Secretary determines the nutrition information in addition to the information required by paragraph (1) should be provided for food subject to paragraph (1) for purposes of providing consumers with information regarding the nutritional value of the food, the Secretary may by regulation require that such additional information be provided in the label or labeling of such food.

"(3) A food which is a raw agricultural commodity shall not be subject to the requirements of paragraphs (1) and (2) if the person who offers the food for sale to consumers provides to consumers the information required by paragraphs (1) and (2) in a manner prescribed by regulation by the Secretary. The regulation of the Secretary shall permit the information described in subparagraphs (C) and (D) of paragraph (1) to be expressed as an average per unit of the same type of raw agricultural commodity.

"(4) Paragraph (1) shall not apply to—

"(A) food which is sold for immediate human consumption at the place of sale, and

"(B) food which is processed and prepared in a retail establishment for human consumption and is offered for sale to consumers but not for immediate consumption in such retail establishment.".

(b) REGULATIONS.—

(1) Within thirty days of the date of the enactment of this Act the Secretary of Health and Human Services shall contract with the National Academy of Sciences to prepare a report which makes recommendations regarding the manner in which the information required by paragraphs (1) and (2) of section 403(q) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)) should be included in food labels and labeling to convey in an effective way nutrition information to the public to enable it to readily observe and comprehend the information required to be disclosed and to understand the relative significance of the nutrition information in the context of a total daily diet.

(2) The National Academy of Sciences shall prepare the report described in paragraph (1) within six months of the date of the execution of the contract of the Secretary under paragraph (1).

(3) The Secretary shall issue proposed regulations to implement section 403(q) of the Federal Food, Drug, and Cosmetic Act within three months of the

date of receiving the report of the National Academy of Sciences. Not later than six months after the date the Secretary issues proposed regulations the Secretary shall issue final regulations to implement the requirements of such section. Such regulations shall require the required information to be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand the relative significance of such information in the context of a total daily diet. Such regulations shall include regulations which establish standards, in accordance with paragraph (1)(A) of such section 403(q), to define serving size or other unit of measure for food.

SEC. 3. CLAIMS.

(a) IN GENERAL.—Section 403 (21 U.S.C. 343) is amended by adding after the paragraph added by section 2 the following:

"(r)(1) If it is a food for which a claim is made which—

"(A) characterizes the amount of—

"(i) the calories, total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, total protein, or dietary fiber, or

"(ii) any item required to be included in the food's label or labeling under paragraph (q)(2), which is contained in the food, or

"(B) characterizes the relationship of—

"(i) the calories, total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, total protein, or dietary fiber, or

"(ii) any item required to be included in the food's label or labeling under paragraph (q)(2),

which is contained in the food to a disease or a condition,

unless the claim is made in accordance with paragraph (2).

"(2)(A) A claim described in paragraph (1)(A) may only be made—

"(i) if the characterization of amount made in the claim uses terms which are defined in regulations of the Secretary, and

"(ii) if the food for which the claim is made contains, as determined by the Secretary—

"(I) calories, total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, total protein, and dietary fiber, and

"(II) all items required to be included in the food's label or labeling under paragraph (q)(2), in amounts which reduce dietary risk to persons in the general population.

"(B) A claim described in paragraph (1)(B) may only be made—

"(i) in accordance with regulations of the Secretary, and

"(ii) if the food for which the claim is made contains, as determined by the Secretary—

"(I) calories, total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, total protein, and dietary fiber, and

"(II) all items required to be included in the food's label or labeling under paragraph (q)(2),

in amounts which reduce dietary risk to persons in the general population.

"(C) In prescribing regulations under subparagraph (B)(i), the Secretary—

"(i) may only authorize claims for which there is scientific consensus, as determined by the Secretary, among experts qualified by scientific training and experience to evaluate such claims regarding the relationship between the calories, total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, total protein, dietary fiber, or the item required to be included in the food's label or labeling under paragraph (q)(2) contained in the food and a disease or condition, and

"(ii) shall require claims to be made in a manner which enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.".

SEC. 4. STATE ENFORCEMENT.

Section 307 (21 U.S.C. 337) is amended—

(1) in the first sentence, by inserting before the period the following: ", except that proceedings for the enforcement, or to restrain violations, of section 403(q) or 403(r) may also be brought in the name of a State in which the food that is the subject matter of the proceedings is located. If a State intends to bring such a proceeding, the State shall notify the Secretary at least thirty days before such proceeding is brought", and

(2) in the last sentence, by striking out "such proceeding" and inserting in lieu thereof "any proceeding under this section".

SEC. 5. CONFORMING AMENDMENTS.

(a) SECTION 405.—Section 405 (21 U.S.C. 345) is amended by adding at the end the following: "This section does not apply to the labeling requirements of sections 403(q) and 403(r)".

(b) DRUGS.—Section 201(g)(1) (21 U.S.C. 321(g)(1)) is amended by adding at the end the following: "A food which makes a claim described in section 403(r)(1)(B) in accordance with the requirements of section 403(r)(2)(B) is not a drug under clause (B).".

SEC. 6. EFFECTIVE DATE.

The amendments made by sections 2, 3, 4, and 5 shall apply with respect to food which is produced or processed 18 months after the date of the enactment of this Act.

Senator **Metzenbaum**. I say to my colleague and friend from Utah, you have had a wonderful road that you have travelled so far, and this can cap your career in the U.S. Senate by joining with me and working out a bill on this subject. The American people want it; they demand it; they need it. Let's work together to pass this legislation.

Senator Orrin Hatch.

Senator **Hatch**. Well, thank you, Howard.

I think he is trying to end my career in the U.S. Senate. I don't know that my heart can take that kind of compliment from the distinguished Senator from Ohio—but I appreciate it, and I appreciate his diligence and efforts to work with us in so many ways as well as his leadership.

Mr. Chairman, I am pleased to join with you today in support of legislation to require mandatory nutrition labeling on all food products regulated by the Food and Drug Administration.

Senator Metzenbaum, you and I both agree that we need to get good nutritional information to all consumers. In that regard, I am happy to welcome our witnesses here today and particularly Commissioner Young.

I have enjoyed every minute I have spent with him over the last number of years, watching the work that he has done, and I don't know anybody who has done more to try and revitalize the Food and Drug Administration and to bring us to this point than Commissioner Frank Young. So I have great admiration and respect for him, and that respect has grown through the years. That is something that is very difficult to say about others in this very fast-paced town.

One of the least expensive changes we could make in this country to reduce our health care costs would be to increase our efforts in the area of health promotion and disease prevention. During 1986, Americans spent nearly $438 billion, $1.2 billion per day, for health care. Yet two of every three deaths in this country were premature. Most of these deaths could have been prevented through appropriate use of preventive services and behavior changes.

Heart disease, cancer and stroke—our No. 1, 2, and 3 causes of disease—still take an incredible toll in our society. In 1986, they took an estimated 1.6 million lives and cost $137 billion in medical care and lost productivity. Diet has been implicated as a factor in all three of these diseases as well as in a large number of others.

Our efforts to educate consumers on dietary practices have been less than adequate. It is now time that we have legislation mandating accurate and uniform nutrition labeling on all processed packaged foods.

I have introduced legislation, S. 1505, entitled, "The Food and Nutrition Labeling Act of 1989." This legislation follows three basic principles: mandatory nutrition labeling; regulation of health and product characteristic messages; uniformity in food labeling; and a nationwide nutritional education program.

Now, I am willing to negotiate legislation that is reasonable. However, we need to adopt two fundamental principles in developing the compromise. First, we need food labels which contain the type of accurate information the American consumer needs and wants, and we need to build some flexibility into the system so that it is not so complex that it will benefit no one.

Second, we need uniformity so that we do not perpetuate the current chaotic situation with respect to food labeling regulation. Consumers do not want 50 different labels and packages. They want one label that they can trust, and they want to trust it in Utah, New York, Ohio and California, as well as the other 46 States.

Mr. Chairman, I believe that you, I and all interested parties can draft a bill that we can all support. You have been a champion, fighting for expanded nutrition labeling requirements. I know that you will want to develop legislation that is workable and that will be credible beyond the year 2000.

Consumers need accurate and concise nutrition and food labeling information so that they can make wise decisions about their diet in relation to a healthy lifestyle.

I look forward to the witnesses' testimony here today. There is great room for compromise, and I am anxious to work with all of you here today.

Now, if I can, I want to make a couple of points at the outset, and then hopefully I can help you to move the hearing along.

I have brought some samples from the grocery store to make a point about the need for flexibility in any mandatory food labeling bill. I want to make the point that you can't and should not want to treat all foods the same way.

For example, the flexibility must allow for small packages so that you can use abbreviated nutrient labeling.

Let me give you an illustration. Here is an empty bottle of seltzer water. Now, should this product be subject to nutrition labeling? Under current law, it is required to be labeled because it makes an implied health claim when it says "sodium-free". However, would we want to require protein, calorie and fat information on this bottle? Probably not. So we need to have some form of flexibility.

Now, on these cocktail onions and cherries—things that many people buy—these products are not consumed for their nutrition values, nor are there any real nutrients in them. In the cherries, you have some carbohydrates, and in the cocktail onions, there are some carbohydrates and a little sodium. Maybe these products should have a simplified nutrition declaration.

These are consomme cubes. This product is a very small product. If we were to require nutrition labeling, it may be impossible to read. Or, they may have to make great, big boxes to put these little cubes in. This is another instance where we must examine carefully how we can best get nutrition information to consumers.

Take Nabisco Shredded Wheat. This product makes a claim that no sugar or salt is added. Now, these are implied health claims, and I personally believe that they are very important. However, under Senator Metzenbaum's and Congressman Waxman's bill, it is unclear whether this product could make these claims because there is a small amount of sodium.

Well, I think we have to be reasonable about these types of problems.

Take mayonnaise. The same is true of this mayonnaise. It says it is "cholesterol-free" and "has reduced calories". As long as this information is truthful, I believe it should be allowed.

Now, this product, "natural basil," basically has no nutrition value. It is basil packed in brine. It has some sodium and some carbohydrates.

You can go through almost countless numbers of other products. We have an enormous array of different types of food in the supermarket. If we in Congress attempt to write a law that prescribes exactly what must be done on every label, it is going to be unmanageable. I want accurate and appropriate nutrition and health claim information to consumers. I do not want unreasonable demands placed on manufacturers so that our goals cannot be reached.

So we should have some flexibility in this system to help us determine how much nutritional labeling or information must be included and how much is to be displayed.

Mr. Chairman, I think these hearings are very important. I don't know of anything that would ultimately be more important for an instant benefit to the American consumer than what you, I and others in the Congress are trying to do. I want to commend you for it. It takes a lot of effort. There are a lot of competing interests with a lot of different problems out there, and I hope we can be flexible enough to do it the right way so that everybody in this country will benefit, will be able to understand this labeling and the information involved, and it will not be such a burden on the producers of packaged foods that costs go through the roof for consumers in the end as well.

Now, I think we can do that, and we're going to work hard to work with you to achieve that goal. So again, I want to express my admiration for you.

Senator **Metzenbaum**. Thank you very much, Orrin. I do intend to work further with you as well as the other groups that have an interest in this subject both from the industry standpoint as well as those who are in the health fields.

I want to say that there are some issues around here that don't lend themselves to negotiation and compromise, to working out a solution. This particular issue, in my opinion, does lend itself to that kind of a resolution. We have been working just about the entire year on trying to come up with an answer that everybody could live with. We haven't arrived at a total answer yet. I do believe this is the Congress that will pass some labeling legislation, and I hope that we can do it with the support of industry, the support of the health groups concerned about this subject and the support of all of the Members of Congress. It won't be easy, but if we put our shoulders to the wheel, I think the result can be achieved.

I think it is particularly important that one major player in this game be a party to those negotiations, and hopefully to work with us as well, and that is the Food and Drug Administration.

Senator **Metzenbaum**. We are very happy to welcome the very well-respected and distinguished commissioner of the U.S. Food and Drug Administration. We are happy to have you with us here this morning, Commissioner Frank Young.

STATEMENTS OF FRANK E. YOUNG, M.D., COMMISSIONER, U.S. FOOD AND DRUG ADMINISTRATION, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY DR. FRED SHANK, CENTER FOR FOOD SAFETY AND APPLIED NUTRITION; JOE LEVITT, CHIEF OF STAFF; MARGARET JANE PORTER, GENERAL COUNSEL, AND ALEX GRANT, ASSOCIATE COMMISSIONER FOR CONSUMER AFFAIRS

Commissioner YOUNG. Thank you very much, Mr. Chairman.

I would first like to take this opportunity to introduce the panel that is with me.

On my immediate right is Dr. Fred Shank, who has assumed the responsibilities of the Center for Food Safety and Applied Nutrition, who has total commitment to the development of a sound labeling program on food safety in the United States.

On my immediate left is Mr. Joe Levitt, our chief of staff, who is a very fine person who has worked on the food labeling issue with us in the past.

Our new general counsel, Margaret Jane Porter, is next to Mr. Levitt. She is coming onboard to take the place of Mr. Tom Scarlett, who has served the agency with great distinction.

Next to her is Mr. Alex Grant, who has served for a long time as our associate commissioner for Consumer Affairs.

Mr. Chairman, Senator Hatch, I know that both of you are vitally interested in this important effort, as has been this committee in its steadfast approach to food labeling.

There are a few issues that I would like to outline for you in depth and submit the rest of my testimony for the record. At the appropriate time, if you do not mind, I would like to move to the charts and focus on some of those.

But first, I believe the most important thing for me to emphasize is that now is the time to develop a thoughtful, flexible, as Senator Hatch said, and comprehensive, as you said, food labeling reform.

It is interesting to note that the time is right, as evidenced by (the most recent) National Academy of Science studies, and before that, the excellent study by the distinguished former Surgeon General, C. Everett Koop.

Once things were placed on the label as far as numbers and sizes, it drew the public's attention to what the meaning of these issues were. And, as Senator Hatch has illustrated by his displays, people will be searching for what is the meaning of this information and how it can best be used.

I also believe, from what I have learned from the public, that there is a general consensus that the present type of nutritional labeling is outmoded, unintelligible, and difficult for the American people to understand. This is especially true for those who are searching to decrease the burden of disease through modifying their diet, as Senator Hatch mentioned in his statistics.

The label, therefore, becomes the point of purchase symbol by which we can focus our efforts on not only consumer education, but good health information.

As a background for the Secretary's initiative, I would like to now walk through a few of these flip charts and then lead to exactly where we feel we are going at this time.

Thank you, Mr. Chairman.

The current labeling system essentially describes a serving size, the servings per container, calories, protein, carbohydrates, and fat. One of the most important questions we are going to have to address in the beginning is whether we require the calories to be expressed per gram of this material.

For example, on protein, we would have to multiple these protein calories by four, because there are four calories per gram; in contrast, we must multiply fat by nine. A very important initial question is whether we do energy-related or do we do a weight-related labeling.

At the turn of the century when we began to move into nutritional labeling and the great surge in the Twenties occurred on vitamins, vitamins and recommended allowances of vitamins were very important. Today this is not considered as critical a factor as in the past. Therefore, what weight should be given to all of these here?

Also, back at the turn of the century, fat was a valued ingredient. The whole labeling system was designed to be sure that economic fraud did not occur, and the right amount of fat was present. Too little fat would result in the compound being misbranded. Today, we know that in contrast, too much fat produces a major problem.

So how we develop this portion of the label is also very important.

Now, as we have grown in the amount of optimal materials that can be put on, it becomes almost unintelligible for the consumer to look at it. Additionally, I have given you a color-coded example of the kinds of things that could be added. You now see the first chart with the items in green added. This now explains the percent of calories from fat, both polyunsaturated and saturated, cholesterol, potassium, and then the variety of additional things that can be added.

One of the things that we've done, as Mr. Grant will describe in a little bit, is to go around the Nation and ask consumers in four locations what they wish on the label, because none of this—not to be disrespectful to the Ford Motor Company—is looking to design an Edsel here. We really do have to get a labeling system that will be important for the Nineties.

Senator HATCH. Mr. Commissioner, I do like those green add-ons that you have put on. For instance, if you didn't have the percent of calories from fat, you'd have to take that fat and times it by nine, and it would give you 63, then you would what—divide the calories into the 63?

Commissioner YOUNG. That's right, and then you would get the percentage.

Senator HATCH. That would give you the 26 percent, but it is a lot of work for the average person to do where they could pick that up and see that this is 26 percent fat per calorie.

Commissioner YOUNG. I think you have hit the nail on the head, and some of the things that we'll do as we go through the suggestions that we have heard is, "Commissioner, make it simple." Make it honest, simple, mandatory and uniform. And I think as we go through this, it really enlarges the focus on what both of you were saying, the need to devise a system of compromise and flexibility that will enable us to see this.

Also it provides for a degree of voluntarism on including other things besides the core requirements, and that is an important issue that I'd like to return to as well.

May I proceed?

Senator **Metzenbaum**. Yes.

Commissioner **Young**. Now, if you look at this large number of requirements, one can begin to simplify it by focusing on a couple of things. The serving size is the same; the number of servings are here; the calories, of course. The first thing that one can do is to break down saturated and unsaturated fat, add cholesterol, sodium, potassium, and focus on the key vitamins that would be required, not some of the other vitamins that are now present in large amounts in normal diets, so that one can simplify this.

Senator **Metzenbaum**. I might point out to you that basically what you have there is what our bill would do. That's the reason it is such a good bill, and that is why Senator Hatch is going to join me in supporting it.

Commissioner **Young**. Mr. Chairman, when I was teaching in the late Sixties—this is not a comment made to your bill, Senator Hatch's bill, or others' bills—I like to quote two of my favorite poets, Simon and Garfunkel. In the song, "Patterns", they said: "I don't know what is real, I can't tell what I feel, so I hide behind the shields of my illusions. I'll continue to continue to pretend."

I do not want to say anything about one bill or another, but will instead try to look at some of the illusions that we have in labeling, because it is a very complex matter.

Now, this is taking a different approach. It focuses on another product, a classical canned product, tuna fish. You can see the calories—in this 2-ounce sample, it would be 60 calories; protein, 12 grams; carbohydrate, 1 gram; fat, 1 gram—and it describes the sodium.

Interestingly enough, if one wanted to, one could take this tuna fish, put it in a strainer, wash out the sodium and make it a low-sodium product personally. But it does provide sodium information anyway.

It now puts the vitamins in percent of U.S. recommended daily allowances, therefore simplifying the milligrams.

Another way to handle this is to now pick up, as many of you were focusing on, a simple graphic that could be utilized so that the consumer picking up one of those many items that you held up, Senator Hatch, would be able to see a uniform, almost International type of standard. We were with the EC community last week, and there is a great deal of interest in International harmonization of calories. We started our discussions there, because this is International trade, and we need to have some degree of uniformity.

As you can see here, the labeling information could be placed either in grams or in energy in relation to calories. From a single glance, one can see that there are very small amounts of fat here, a high amount of protein, negligible carbohydrates. And the consumer may be able to be helped.

In addition, one would have the exact calories that would be here, and then some of the other things that could be listed either with descriptors such as "low", or again in percentages.

Now, we have carried this a little bit further. We have gone around the country and asked whether or not it might be appropriate to have a wheel that would give a very simple single view as to what might be in this food. In this case, we have used a percent, and we have expressed it as percentage of dry weight per serving. It could just as easily be in calories, but we have chosen weight on this example.

As you can see from a glance, one can see the complex carbohydrates, the sugars, and the fat. You could also stipple this and make it saturated plus unsaturated and you can see the protein. You would still label other things such as calories; you would add sodium, cholesterol, dietary fiber, Vitamins A and C, calcium and iron, and that would certainly be more simple and more helpful than the array of compounds that we have here. It might also, Senator Hatch, lead to a very simple way of dealing with your appropriate concern of what do you do with the small packages.

If I might return to the chair now and continue the process that we have been going through. We felt that for these reasons, a comprehensive labeling reform does need to occur. In this way, the administration associates itself with the needs that the Senate and the House have recognized for calorie reform.

In our particular focus, we decided to publish an Advance Notice of Proposed Rulemaking and to go throughout the country, asking particular consumer groups what their concerns are. Fundamentally, we were soliciting questions in five major areas to get the answers that consumers would like to tell us. For example, should we revise the requirements? Should we change the nutritional label format on food packages? Should we revise the ingredients for labeling and their requirements? Should we formally define commonly-used descriptors and/or consider the use of standards of identity for certain foods?

I did not realize until we undertook this review that pasteurized creamy cheese spread was called that because it was 33 percent by weight fat. These kinds of things are not known to the consumer, and yet we use these descriptors.

We also wanted to figure out how to reasonably permit the appropriate use of messages on food that link the food components to the prevention or the reduction of the disease burden, as when we started this comprehensive labeling; this was the logical end in which we would go.

We also asked other questions: Should we seek to expand nutritional calories and make it mandatory? What should the agency's priorities be for deciding what changes to make? How do we bring these in, as the issue of labeling provokes some interesting ideas? Should there be a core of mandatory, required, uniform ingredients, coupled with allowable add-on requirements as nutritional information becomes available, therefore, there would be some flexibility in that people could add these ingredients voluntarily until the issue became fully resolved.

For example, if I were sitting here 5 years ago, I don't think we'd have the focus on fiber that we do today. Twenty years ago, I do believe we would not have focused on fat. The question then arises, when do these items become voluntary and when do they become mandatory?

We have already received 140 written comments in response to the August 8 advance notice from 120 different individuals, including consumers. We have chaired the first two meetings in Chicago, in which we highlighted nutritional labeling content. I believe we have had an excellent turnout from consumers on this matter.

We are also having consumer exchange meetings, chaired by the FDA district directors in 20 locations around the Nation. The National Academy of Sciences of the Institute of Medicine will be pursuing the appropriate format of labeling under a contract with FDA and USDA.

We trust that our Advance Notice of Proposed Rulemaking process will result in a Proposed Rule being submitted around April to June of next year; following that, a final rule. Of course, we realize that legislative events may overtake this, or administrative events may overtake the legislative activities, depending on how the process goes. But we felt in either way, hearing directly from consumers what they wanted would be of value to the process.

Before concluding, I would like to ask Mr. Grant to respond to what he has learned from the hearings so far as a person representing our consumer activities within the agency.

Alex.

Mr. GRANT. Thank you.

I'd like to say a word about the format of the meetings. The meetings were legislative hearings before the commissioner and a panel made up of our general counsel, representatives of our general counsel, two representatives from the Center for Food and Nutrition, and chaired by the commissioner. Presenters were asked to sign up and testify and present their views. Each person was given 10 minutes to present, with 2 minutes set aside for questions by the panel. They were also asked to deliver or present to us written statements.

I think the one thing that made these hearings unique was the fact that we stayed open until 8 p.m. to make sure that consumers, or the public, who were working during the day could come by and present their views.

We were especially pleased with the range of participants. Out of a total of 96 who testified, we heard from 42 consumers, 27 industry representatives, 12 State and local government representatives, and 15 spokespersons from health professional organizations. We anticipate that this well-balanced mix will continue for the last two hearings, which are scheduled next month in Seattle and Atlanta. The focus there will be health messages and nutrition labeling.

I think the one thing that came through loud and clear at both hearings is that consumers are in favor of mandatory nutrition labeling.

There was an elderly woman in Chicago who asked for labels which reflect the "three Rs". That is, labeling should be "regulated, realistic and readable". We heard widespread approval for continuing to list nutrition information on food labels, but while almost everyone supports the listing, there is disagreement over how best to present nutrition information and even what information to present.

Both in Chicago and San Antonio, there were statements from those with special needs who would prefer clear and distinct ingredient labeling. At both hearings, speakers expressed the need for consumer education to go hand-in-hand with new labeling requirements. The question then arose as to how best to accomplish this—through the labeling, the food label itself, or through education efforts distinct from the label.

If the educational message is to be a part of the label, the question remains unsettled as to how much government control or approval is desired.

We have heard from the elderly, Blacks, Hispanics, health professionals, parents of young children. We have heard from those living in the inner city as well as rural areas. The goal of the Department's food labeling initiative is to bring those views together to reach a well-reasoned decision—and I might add, it is not over until it is over; we have two more hearings coming up.

Commissioner YOUNG. Thank you, Alex.

Probably the most touching of the witnesses to me was a 75 year-old Hispanic man in San Antonio, who came to the hearing site a day before so that he wouldn't miss the room and came 45 minutes early so that he'd be on time. He wrote—and I submit for the record—a two-page handwritten testimony that he wanted read in. He said above all, the label should be honest. We have a lot of senior citizens in our Nation. We need to have it readable. A lot of us are worried about diseases. Some of us are on special diets. Be sure that it is honest and it can help us.

That's our goal. We will submit the other summaries for the record of these two meetings. And we look forward, Mr. Chairman, to working with the Senate and the House in this vital role of development of a labeling reform.

The time has come. We need to link the label with reduction of the burden of disease. Our laws need to be implemented fairly and honestly. We have seen some terrible things occur with packages—coming back from one of the trips, I got the American Airlines peanut package that was passed out with the variety of drinks that go down the aisle, and it said on the front, emblazoned: "No cholesterol". You had to turn it over, read, multiply by nine the number of calories of fat to come up with the fact that it was two-thirds fat—but it surely was no cholesterol, because peanuts do not have cholesterol. This type of chicanery needs to be dealt with.

Food messages, health messages, health claims, we understood were widely felt to have gone beyond the pale. We need to deal with that. Yet on the other hand, we cannot stifle innovation. To destroy the unique industrial capability of the United States by heavy, burdensome regulations would also not be fair. This will be a careful balance.

I look forward to working with you, and I can commit on behalf of the Secretary and Assistant Secretary Mason the strong support for developing a proper labeling system so we can focus on sound nutrition for a healthy America.

Mr. Chairman, I'll pause and be delighted to answer any questions that I can.

Senator **Metzenbaum**. Thank you, Commissioner Young, and I want to commend you. I think these public hearings you are holding are significant. They give people a chance to have some input as to what is going on in the whole labeling issue. I don't think there is any subject—well, I guess there are some, like drugs—that commands the attention and concern of the American people more than the issue of what people are ingesting when they are buying and eating the food that they do on an everyday basis.

About 5 years ago, the FDA looked into sodium labeling, and you set up some guidelines regarding "low" and "very low" sodium claims, etc. The regulations were voluntary. I have here a can of diet Coke which is divided into two servings so that it can qualify as very low sodium. My own opinion is that it is absurd to divide this into two servings.

Commissioner **Young**. The one that I liked was the package of potato chips that said "1.4 servings", and then on the front, "Once you eat one, you can't put it down."

Senator **Metzenbaum**. Do you think it is a fair claim to say that a can of soda, which is generally regarded as a single serving in most people's minds, equals two servings for the purpose of labeling?

Commissioner **Young**. I think if you do something as a serving size, there has to be some degree of fairness. I remember a short time ago that Sara Lee tried with its cheesecake to call it "lite". The "lite" was done by reducing the serving size. We can't play tricks on the American people.

Yet on the other hand, I do not know whether it is because we are penurious or because we don't drink a whole can, my wife and I usually split a can of soda at night. We go heavy on ice and light on the soda, and that makes two servings out of one of those little cans.

Senator **Metzenbaum**. Well, I think that's the exception, frankly, rather than the rule. When you go on an airplane, they give you the whole can; when you order soda any place, they give you the whole can.

Commissioner **Young**. But what you said is an attempt to deal with deception. If you try to deal with serving sizes for deception, that's just not fair.

Senator **Metzenbaum**. Right. Now, this box of 100 percent oat bran—right on the front, 100 percent bran—contains 8 grams of fiber per serving, and they claim "high fiber".

Then this hot cereal from the same company contains 5 grams of fiber and claims to be "high fiber".

Now, what do you make of that? Are they both "high fiber"? What would you consider to be "high fiber", and isn't it appropriate that there be some standards set as to what is and what isn't high fiber, or at least spell out the facts to the consumer?

Commissioner **Young**. One of the concerns that arose in the hearings was the need to focus on these descriptors. People said, "Commissioner, we need to have 'high', 'low', 'lite', 'natural' defined."

There was also some interest in having similar terms—such as "high", "reduce", "low", "very low" be in the same range or in similar absolute numbers. On the other hand, some argued for a degree of flexibility.

I do believe that unless you have full quantitative disclosure, consumers can be tricked. So in that sense, one of the things that FDA is exploring in the hearings is the extent to which these terms and descriptors should be defined.

Senator **METZENBAUM**. Here is a back of Robert's American Gourmet Potato Chips with oat bran. I can't help but laugh about this. The bag says, "The potato chip that is good and good for you." It also carries a "no cholesterol" claim. But it also contains no nutrition labeling.

Frankly, Mr. Commissioner, is that or is that not against the law?

Commissioner **YOUNG**. Well, it also borders on being a joke, as you said. I think once we begin to make these kinds of claims, it moves into the arena that I so strongly support—mandatory, uniform labeling.

The combination of oat bran into a variety of vegetables has even come faster than the genetic engineer could encode those genes in them. In 1984-85, when we started the fiber war, I commented that it would probably be equivalent to the cold war unless there was industrial restraint. That did not occur. The fiber war has been booming. I only hope like the Berlin Wall, someday some of these scurrilous fiber claims will come tumbling down, and we can bring freedom, democracy, uniformity, and responsibility, to food labeling.

Senator **METZENBAUM**. Now, you've been conducting these hearings, and I think that's good; you've been involving yourself personally in this issue, and I think that's good. We have two pieces of legislation in the House and the Senate on this issue. You are in the process of trying to move forward with a rulemaking procedure.

Frankly, Mr. Commissioner, you know the chairman of this committee well, you know the ranking member of this committee well. Why don't we simply sit down, the three of us, as well as the industry and organizations that are concerned. Why don't we sit down and knock out a bill. Why don't you join with us in helping prepare such a bill?

Commissioner **YOUNG**. That is a difficult question. Let me talk around it a little bit. I think that there is an obvious need for us to work together and deal with the appropriate solution to food labeling. But as I said to Mr. Waxman, at this moment I believe it is a bit premature. I would like to finish the hearings and determine what should be appropriate.

I must say, too, that we have looked to see the extent of capability under the law in dealing with a regulatory reform versus a labeling law. Right now, I do believe that much of what we need to accomplish could be accomplished under a regulatory schema. In the same spirit, I would hope that if the regulatory schema does appear to be appropriate, we can get the appropriate input from the House and Senate and do it through regulations.

There is a reason that I am concerned about a law. I have seen—with no lack of respect for the intent of the law—some laws come through that are very inflexible in the end. As laws pass, little things get added on, this clause, that clause, and sometimes lose their scope.

I was impressed when I was at the EC. Fred Shank and I spent the entire time working with the Food Directorate, and in your very great interest of concern, that of infant formula, they have pointed out their willingness to compromise with us. As their directive was going forward, the EC found that 75 percent of the infant formula made by United States manufacturers would have been excluded in Europe. Conversely, our regulations and laws would have excluded European compounds in infant formula. This was primarily not due to big issues, but to relatively small ones. If I am remembering this correctly, one of the laws required 15 milligrams of iron. I believe the other one required 12 milligrams of iron. I will supply this information for the record. Therefore, the formula would have been considered adulterated if it was being shipped and sold with the 12-milligram requirement to a country with a 15-milligram requirement. As you can see, that difference is not really very significant.

Therefore, we feel that there is a great need for flexibility, particularly with the European Common Market coming on line. I believe that the entire food labeling initiative and our approach was probably one of the longer discussions we had.

Mr. **Shank**. Yes. Quite a bit of time was spent on the overall food labeling initiative. There was also discussion over whether the food additives and the other substances that are allowed in the United States would be allowed in Europe.

It is going to be a major challenge to see what changes are needed and the best way to proceed in order to have not only a unified market within the United States, but a unified market in European communities.

Commissioner **Young**. I guess, Mr. Chairman, with that flexibility, we felt that a regulatory approach would be something that we would want to consider.

Now, I do not under any circumstance want to say that we are not interested in the legislative approach, but that was the reason we took the direction we did.

Senator **Metzenbaum**. Mr. Commissioner, I want to be very realistic. You have health claims regulation which you have attempted to move forward with, and you have been held up at OMB. What makes you think you can get a final rule out of OMB now in this area?

Commissioner **Young**. I think there are two reasons. First, although regulations sometimes do take a long time to come through the process, I believe there is a strong commitment on behalf of the administration to develop this approach. Second, I have at times seen where there is a lack of consensus on all sides of the street. I know right now you are laboring mightily on developing a budget which should have been out on October 1. Agencies such as ours are now in substantial sequestration. We know that the budget is a difficult issue and it is being worked out as well. In that same spirit of trying to be timely, we will move very, very rapidly, and I believe that we have the commitments that will get this through.

I would not have said publicly that I expect to see these regulations out between April and June of 1990 on a proposed rule and

April and June of 1991 as a final rule if I did not feel that we could deliver.

Senator **METZENBAUM**. Commissioner, there has been a great deal of debate about the so-called "uniformity" question. We have included a specific preemption section in our bill with regard to the nutrition provisions in the bill. Yet, we do not preempt State labeling laws in other areas, including pesticides and cancer warnings. My position is that if you want to talk about preemption on food safety issues, you have to deal with it in a bill that sets tough food safety standards.

Would you tell me what your position is on that issue?

Commissioner **YOUNG**. At the moment, I believe that there is no reason not to have, as you pointed out, mandatory uniform labeling with regards to nutritional claims. I would also feel the same way in the food safety arena. I believe that as we are moving to a common world market it is important to avoid having a patchwork of overlying, overlapping, confusing regulations.

For example, in one area that we are struggling with now, in Europe and Canada, Red Dye 3 is considered a safe food additive; Red Dye 2 is considered a safe food additive. We do not consider this to be so in the United States. I am not arguing that it should or shouldn't be so. However, I am pointing out that these additive issues are important, and the fundamental reason is that we do risk assessment differently. In fact, the very method by which we do risk assessment changes.

I think we are going to need to have much more harmonization. If we have a different set of State standards, we will have great difficulty in harmonizing. For the regulatory agencies around the world, this would be a great burden. Therefore, I would request scientifically that we move ahead and define these standards. I also request that we use the best science for sound regulation, but that it be uniform. That does not mean that it is going to have to be tough. I was very pleased with the President's initiative on food safety that, in many ways, is quite similar to Mr. Waxman's initiative. There are a few places that it departs a semi-bright line on what is the upward-bound risk rather than a bright line. However that, in part, is due to the recognition that there are differences in risk assessment methods.

I think all of us are struggling with uniformity. But that does not preclude the concept that uniformity has to be safe. You can't mean uniformity without having the proper safety.

If you were leading to Proposition 65, at this time, the administration's position is, that we did not see any particular area that was out of compliance with the interstate commerce clause. Therefore, we would act on a case-by-case basis when that occurs—and I'll submit Mr. Plaiger's letter for the record on that.

Senator **METZENBAUM**. Thank you. It will be included in the record.

[Information of Commissioner Young follows:]

SUMMARY REPORT

Food and Drug Administration
Chicago, Illinois
October 16, 1989

The first of FDA's four public hearings on food labeling was held on October 16, 1989, in Chicago. Fifty-five (55) speakers, predominantly consumers and health professionals, but also including industry and State and local government, testified before an FDA panel chaired by Commissioner Frank E. Young, M.D., Ph.D. Dr. Lester Crawford, Administrator of the Food Safety and Inspection Service of the U.S. Department of Agriculture, was a member of the panel. The hearing was well attended and received ample coverage in the local media and on at least one national TV network.

The tone of the hearing was very constructive. Most of those testifying had positive suggestions to make on nutrition label content, which was the primary focus of this hearing. While views expressed at the hearing varied in detail, most speakers enjoyed and empathized with the speaker who summarized her goals for food labeling by stating that it should reflect the "three R's" -- that is, labeling should be regulated, realistic, and readable.

In general, consumers and health professionals considered that nutrition labeling should be made mandatory. They gave relatively less consideration of the possible exemptions to such a requirement, although some of those testifying mentioned possible exemptions for fresh fruits and vegetables, spices, chewing gum, tea, etc. On the other hand, a few people wanted across-the-board requirements that extended beyond FDA-regulated products. The subject of food prepared and eaten outside the home (e.g., at fast food and other restaurants) received less attention, although a few said they believed it important that this food be included. There was also mentioned the possibility of some "alternate mechanism" (posters, etc.) in these situations.

There was considerable agreement among speakers that the content of nutrition labeling should be modified to include cholesterol and a breakdown of fats -- saturated fat, unsaturated fat, monounsaturated fat, polyunsaturated fat were mentioned. A few people mentioned the omega-3 fatty acids and said they should not be included. Other items specifically mentioned by various speakers for possible inclusion were sugars, dietary fiber (soluble and insoluble), and potassium.

Most people believed that in the interest of providing meaningful information more simply, some micronutrients that are currently required could be deleted. They explained that there is decreased concern these days about diet deficiencies. However, calcium and iron were cited specifically as needing to be retained on labels, and several speakers mentioned that the RDAs for these items may not adequately represent women's needs.

(DOCKET NO. 89N-0226)

How best to convey nutrition information on the labeling was the subject of considerable testimony, and also of questioning from the panel conducting the hearing. This included issues of serving size, declaration of nutrients by percent distribution and/or absolute measurement (e.g., 30% fat and/or 15 gm. fat), and print and graphics.

There was general belief that labels of single serving containers should provide total nutrients for that serving (not per ounce, etc.), and servings per container should be easily used in division (e.g., contains 2 servings, not contains 2 1/3 servings). Further, some consumers particularly stressed the need for serving sizes to be more standardized and in common household measures (cup, tablespoon, etc.). The "diet exchange" method already used by diabetics was mentioned as having some advantages -- e.g., it is already in place and functioning well for a segment of the population, and it lends itself to the concept of "balance" in the diet as opposed to "good foods" and "bad foods."

Some speakers were very much in favor of simple pie charts, showing nutrient distribution, but others stated that these should be used only in addition to absolute measurements, which were considered essential. There was solid support for the idea that specialists in market research could develop valuable data on how best to use the label to communicate nutritional information and that such research should be conducted prior to any regulatory action on formats.

Probably the most commonly expressed thought by the public at the hearing was that aspects of current labels are at best confusing and at worst misleading. Examples most frequently cited were of labels with descriptors or health messages that the speakers believed give consumers inaccurate impressions or incomplete information such as "lite," "lo," "natural," "no cholesterol," and various statements regarding products containing fiber. While recognizing the practical space problems, speakers very frequently also stated that the small print size of current labeling is a major problem, mentioning that some of the people who are most likely to have health problems leading them to consider labels carefully are also people whose eyesight is sub-optimal (e.g., older people and diabetics). Many speakers recommended that an education program should be developed to assist consumers in using the label for their good health.

A number of special issues were brought up, some quite poignantly by people with special medical conditions, such as allergies or diabetes, or by caregivers or others speaking on behalf of such people. These included:

Monosodium glutamate (MSG): Restaurants, airlines, etc., are a problem; also, it was said that ingredients listed on a label as "hydrolyzed vegetable protein" and "natural flavoring" may contain MSG or MSG-type substances about which the consumer is thus not informed.

Sulfites: Potatoes and food outside the home were mentioned especially as problems.

Pesticides/fungicides: The desire to have these identified on labeling was expressed, and there was some discussion of possible applicability of measures being used in California.

Aspartame: There were concerns expressed about safety.

Diet foods: There were concerns that some marketers of diet meals will not reveal those products' nutritional content.

Sugars and salts: Speakers expressed the need for total amounts of sugars and salts to be identified on labels -- some current sources of sugar and salt (e.g., fructose) are not always identifiable to consumers as sugars and salts.

Fats: Speakers expressed a need for components of fats to be listed on labels (including meat and poultry labels).

Speakers included about a half dozen representatives of State and local governments. Those representing health departments and related offices tended to express the same needs for labeling changes as consumers and health professionals in general. A State regulatory office described its concerns and steps it had taken on labeling of health messages it considered misleading.

Speakers also included about a half dozen industry representatives. They stated that changes in nutritional labeling are needed, expressed the need for uniform, consistent labeling requirements throughout the United States, and referred to the lengthy lead time and expense involved in making changes. In addition, they described particular problems faced by individual industries (e.g. retail candy stores, where customers choose their own assortment of candies). The panel asked that detailed information on the economic and practical issues in implementing labeling changes be submitted to the docket.

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Attachment: List of Presenters

Food Labeling Hearing
(Docket No. 89N-0226)

Food and Drug Administration
Chicago, Illinois
October 16, 1989

List of Presenters

1. Sherwin Gardner
   Grocery Manufacturers Of America
2. Linda Van Horn, R.D., Ph.D.
   American Heart Association of Metropolitan Chicago
3. John R. Blair
   Quaker Oats Company
4. Luther C. McKinney
   National Food Processors Association
5. Susan Kordesh, R.D.
   Nutrition Educator/Consultant
6. Richard M. Peritz
   Fannie May Candy Shops, Inc.
7. Rella Dwyer
   American Bakers Association
8. Rosalie Ziomek
   Illinois Coalition for Safe Food
9. James P. Jacobson
   Office of the Attorney General, State of Minnesota
10. Roger L. Berman, R.Ph.
    Roger Berman & Associates
11. Sandra J. Bartholmey, Ph.D.
    Gerber
12. Cathy Kapica, Ph.D., R.D., CHE
    CMK Health Communications
13. Mary Ross
    Sierra Club
14. Shirley Bohm
    Illinois Department of Public Health
15. Debra Kehm, R.D.
    VA Medical Center

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16. Beth Pa Von, R.D.
VA Medical Center

17. Dr. Rafael W. Flores
Consumer

18. Carol Burnett, R.N.
Anchor HMO

19. Jan Schakowsky
Illinois Public Action Council

20. Jean McCollum, R.D.
Consumer

21. Mary Abbott Hess, M.S., R.D.
American Dietetic Association

22. Bonnie Wilson
Norma Richard
Consumers and Parents of Diabetic Children

23. Jananne Finck
Home Economist

24. Kristen McNutt, Ph.D., J.D.
Chicago Nutrition Association

25. Carol Berland
Consumer

26. Bonnie Minsky
Nutrition for Optimal Health

27. H. George Bruckman
TOPS

28. Robert Sell
American Association of Retired Persons

29. Ruth Christmas
Consumer

30. Wanda Weiss
Consumer

31. Marian Bond
Consumer

32. Helen Adnderson
Consumer

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33. Jack Samuel
    Consumer

34. Dr. George R. Schwartz
    Author

35. Dr. Dan G. Parmer
    Food Dairy Protection
    Chicago Department of Health

36. Linsay McLean
    Vita Royal Products

37. Dr. William Schwartz
    American Meat Institute

38. Susan Tolzer, ESQ
    Bass and Ullman for National Nutrition Foods Association

39. Hilda Whittington representing Dr. Richard Biek, M.D.
    Chicago Department of Health

40. Reginald Webster
    Consumer

41. Carol Meiki, R.D.
    Consumer

42. John Baderka
    Consumer

43. Lauren Leach
    Ph.D. Student, University of Illinois

44. Barbara Mullarkey
    Consumer

45. James Tennyson
    Consumer

46. James Tolson
    Consumer

47. Gail Duberchin
    Consumer

48. Sharon Moody, R.D.
    Food Protection, Chicago Department of Health

49. Carolyn Swope, CHE
    Vermillion County Cooperative Extension Service

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50. Karel Kirschner, CHE
Vermillion County Cooperative Extension Service

51. Arthur Fletcher
Consumer

52. Joseph E. Gardner
Illinois Rainbow Coalition

53. Sam Cornelius
Concerned Consumer

54. Don Kimball
Milk Industry Foundation & International Ice Cream Assoc.

55. Stanley Modrzyk
Concerned Consumer

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SUMMARY REPORT

Food and Drug Administration
San Antonio, Texas
November 1, 1989

The Food and Drug Administration (FDA) held the second of four hearings to gather public views on food labeling in San Antonio, Texas on November 1, 1989. The hearing was chaired by FDA Commissioner Frank E. Young, M.D., Ph.D., and centered on three topics: (1) ingredient labeing, (2) food standards, and (3) food descriptors. Views were also presented on the other food labeling issues that are currently under consideration by FDA -- nutrition label content, nutrition label format, and health messages.

The meeting was well attended, with an audience of 100 people, in addition to the 41 individuals and organizations who made presentations for the record. About one-third of those who testified spoke as consumers, one-third represented the food industry, and the rest were divided among health organizations and representatives of the State of Texas. FDA officials and a representative from the U.S. Department of Agriculture attended the hearing as observers. Local press coverage of the hearing was extensive, with some national coverage.

Speakers throughout the day expressed the theme that some current labeling practices are confusing at best and deceptive at worst. Consumers, dietitians, and health organizations emphasized that consumers have difficulty in interpreting the current food label, and that the label therefore needs to be simplified. Concern was expressed about misleading information, too much information crowded on the label, and the use of terms that are difficult for many consumers to understand. Frequent calls were heard for labels that are truthful and complete.

Many speakers expressed the need for consumer education to go hand-in-hand with new label requirements. These speakers stressed that, without consumer education, the initiative to improve the food label might not bring about its intended benefits.

Without exception, speakers wanted nationally uniform labels. Consumers, the food industry, Texas State representatives, dietitians, and health groups all viewed national uniformity as very important, both in terms of communicating health information to the public and in assuring smooth and economical interstate commerce.

Views on Ingredient Labeling

Speakers expressed widespread support for full ingredient labeling on packaged foods. In addition, many speakers stated that ingredient labeling should be mandatory for standardized foods. (Some standardized foods are not now required to list mandatory ingredients). These testifiers felt that although the foods are standardized and consumers feel confident that they are getting the "real" food, consumers may be unaware of the actual ingredients in the standardized foods.

Views on ingredient labeling (and nutrition labeling) for restaurant and fast foods were mixed. While consumers supported this concept, industry representatives expressed the feeling that such labeling would be difficult and costly to implement.

Several consumers expressed a preference for having sugars grouped together on the ingredient label. These consumers felt that the current system is misleading, and that sugars might actually play a larger role in foods than is apparent from the current ingredient label.

While some consumers expressed a desire to have percentages listed for each individual ingredient (or at least major ingredients), representatives from industry and several health organizations generally opposed this feature. Consumers who favored this feature felt that it would provide them with fuller and more useful information about food products. Industry opposed percentage listing for individual ingredients for three main reasons: (1) the potential for disclosure of trade secret information; (2) added costs for manufacturers; and (3) lack of evidence that there is any public health benefit. Health organizations opposed percentage ingredient labeling for other reasons: (1) it might confuse the consumer, because there would be more than one type of percentage on the label (percent of ingredients by weight and percent of recommended nutrient intakes in nutrition labeling); (2) it might be misleading (or easily mis-interpreted); and (3) it is unnecessary if complete nutrition labeling is on the product.

In considering the possible need to specify individual flavors, colors, and spices, most speakers thought this was necessary only in cases where a particular substance might cause allergic-type reactions in susceptible individuals. Industry strongly opposed the detailed listing of flavors, colors, and spices on the grounds that it would reveal trade secrets, since some foods are distinguished from their competitors mainly by their flavor/color/spice combinations. There was also concern that specifying colors and flavors would add complex chemical names to the ingredient list, which would further confuse consumers.

Feelings on "and/or" labeling for fats and oils were mixed. Consumers and some dietitians wanted to reform the present system of "and/or" labeling (which allows companies to substitute saturated and unsaturated fats/oils for each other, without changes to the label). Industry strongly supports retaining the current "and/or" system for economic reasons. Several health professionals suggested a compromise position -- allowing "and/or" labeling for like types of fats/oils. Under this system, all fats/oils in the "and/or" statement would have to be primarily either saturated or unsaturated. Some speakers (including industry and health professionals) believed that the current "and/or" labeling of fats and oils is adequate, provided that declaration of the amounts of total, saturated, and unsaturated fat is given in nutrition labeling.

Several industry representatives supported the extension of "and/or" labeling to nutritive carbohydrate sweeteners. However, most other speakers did not comment on this issue. There was little concern expressed about the current "and/or" labeling regulations for minor ingredients, such as dough conditioners.

Views on Food Standards

There was widespread support, both among consumers and industry, for the concept of food standards. However, many speakers made suggestions to improve on the current system, such as: (1) establish new food standards to allow for variations of current standardized foods -- for example, a new food standard for reduced fat cheddar cheese (in addition to the current standard for cheddar cheese); (2) establish a simplified administrative procedure for defining and revising food standards, to replace the formal rulemaking process that is now required; and (3) if new food standards cannot be established, allow certain descriptors (such as "reduced fat") to be used in conjunction with the names of standardized foods, resulting in non-standardized foods.

Views on Descriptors

Speakers expressed widespread support for FDA to define descriptors such as "light," "lite," "reduced," "low" and "high," "organic," etc. Almost all speakers called for more regulation in this area.

Several dietitians and consumers spoke about consumer confusion in the area of understanding the word "reduced," because "reduced" has different meanings in relation to different products. For example, "reduced sodium" represents a 75 percent reduction, whereas "reduced calories" represents a 33-1/3 percent reduction, according to FDA's current regulations. These dietitians and consumers would like the word "reduced" to have one meaning in all circumstances, e.g., a reduction of 50 percent.

Views on Nutrition Labeling

Speakers expressed widespread support for mandatory nutrition labeling of processed, packaged foods. There were mixed reactions to the idea of having nutrition labeling for fresh fruits and vegetables. While there was no support for labeling each individual piece of produce, there was some support for having the nutrition information available near the products.

In line with the idea of simplifying the food label, several speakers called for a decrease in the number of micronutrients (vitamins) that must be listed on the label. Some of these speakers expressed the hope that the space could be used instead for larger lettering to help the elderly read the label. Also, several speakers believed that regulations should specify realistic and uniform serving sizes for use in nutrition labeling.

There was widespread support for requiring the label to include additional macronutrients such as total fat, saturated fat, unsaturated fat, fiber, carbohydrate, complex carbohydrate, and sugar. A few speakers, mainly industry, wanted labels to list only total fat, and not show a breakdown of the fatty acids.

There was strong support, particularly from dietitians, for presenting nutrition information in grams, because this would permit individuals to keep track of total daily consumption of macronutrients, e.g., total fat and saturated fat. While many consumers and health professionals also wanted declaration of macronutrients as a percentage of total calories, a few health professionals spoke out against this. They felt that such a presentation could mislead consumers because it would encourage them to focus on individual foods rather than their total daily diet.

Many of those testifying felt that the use of graphics might make the food label more understandable. Some speakers emphasized that new label formats should be consumer-tested before being written into regulation, to assure that they truly improve the comprehensibility of the food label.

Views on Health Messages

Among those who commented on the subject of health messages, there was widespread sentiment for an end to what was termed the current "free-for-all" in the health messages area. Without exception, speakers wanted a more regulated market, although there was some disagreement on what the regulations should be.

Representatives of the State of Texas, in particular, spoke out on the issue of health messages. They felt strongly that FDA should withdraw its 1987 health messages proposal and should not allow any health messages on food labeling. If FDA does not proceed to allow health messages, Texas representatives would prefer that FDA mandate the wording that would be allowed in the messages.

One speaker expressed the view that FDA should not wait for full scientific consensus (in the form of an NIH consensus conference output, for example) before allowing health messages on food labeling. This speaker asserted that FDA should be able to define a lesser degree of scientific substantiation for health messages that nevertheless assures that the health message is a valid one.

Views on Other Topics

A range of other topics and ideas was expressed at the hearing, including:

- The needs of the Hispanic population should be addressed through greater use of the Spanish language on labels or by retailers.

- The presence of monosodium glutamate (MSG) in any ingredient should be labeled because of reported adverse health effects in susceptible individuals.

- Caffeine should be labeled whenever present.

- Larger print size is needed for the elderly.

- Bar codes could be used in the supermarket to produce readouts of detailed nutrition information. It was suggested that by having more detailed information readily available in this way, the label could be simplified and larger print could be used which might help the elderly who have a problem reading the small print on labels.

- Small businesses and businesses with a wide variety of very small volume products should be exempted from nutrition/ingredient labeling requirements, due to the economic burden that would be imposed.

- Due to the expense of nutrient analysis, manufacturers should be permitted to use standard tables on nutrient values of ingredients to calculate the nutrient content of food products.

- Bottled mineral water (from springs and wells, with no added or subtracted ingredients), which contains few or no nutrients, should be allowed to make labeling claims such as "no salt" and "no sweeteners," without being required to provide other nutrition information on the label.

* * * * * * * * *

Attachment: List of Presenters

Food Labeling Hearing
(Docket No. 89N-0226)

Food and Drug Administration
San Antonio, Texas
November 1, 1989

List of Presenters

1. Jesus Cardenas
   Consumer

2. Dan Sowards
   Texas Department of Health

3. Steve Gardner
   Office of the Attorney General, State of Texas

4. Ellen Haas
   Public Voice for Food and Health Policy

5. Sherwin Gardner
   Grocery Manufacturers of America

6. Nell Lyssy
   Child Care Feeding Program

7. Dr. George Latimer
   Office of the State Chemist, State of Texas

8. Shelia Sackman
   Continental Baking Company

9. Lynne Scott
   American Heart Association

10. Neva Cochran
    Texas Dietetic Association

11. Stephen Eure
    Snack Food Association

12. Molly Gee
    American Dietetic Association

13. Malissa Lynn West
    Consumer

14. Katherine Smith
    Quaker Oats Company

15. Joseph Stevens
    Consumer

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List of Presenters

16. Everett Anschutz
    National Legislative Council
    American Association of Retired Persons

17. Jim Turner
    Consumer Law Firm

18. Hilarie Hoting
    American Meat Institute

19. Daniel Arocha
    Consumer

20. Dr. Arnold Denton
    National Food Processors Association/Campbell Soup Company

21. Alta Engstrom
    General Mills

22. Col. William Henderson
    Consumer

23. Margaret Wittenberg
    Whole Foods Markets

24. Jim Peterson
    What A Burger, Inc.

25. Rhona Applebaum
    Chocolate Manufacturers Association

26. Marge Henderson
    Consumer

27. Marilyn Faber
    Consumer

28. Rosario Hamilton
    San Antonio Metro Health District, City of San Antonio

29. Sharon Gerdes
    Dawn Food Products

30. Hans Natler
    Natler Delicatessen

31. Ava Knapp
    Consumer (Nutritionist)

32. Dianne Pfeil
    Consumer

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33. Michael O'Flaherty
Organic Food Processors of North America

34. Anjail Ansari
Consumer

35. Dan Kelly
Department of Agriculture, State of Texas

36. Carol Walter
Consumer

37. Tom Balmer
Milk Industries Foundation Association

38. Brenda Knowles
Associated Milk Producers, Inc.

39. Clinton Miller
National Health Federation

40. Susan Magrann
Consumer

41. Rick Scoville
Artesia Waters, Inc.

* * * * * * * * *

Letter From An Elderly Man In San Antonio on the Subject of Nutrition Labeling

Jose Cardenas
105 Monclova
San Antonio, TX
78207

89 NOV 2:35

DOCKET NO. 89N-0226
SAN ANTONIO, TX
DATE RECEIVED 11/1/89

I am not an expert at anything, just a Senior Citizen and a panelist of one of the panels of The United Way.

What the Food and Drug Administration is now doing, is very important.
You should be commended for seeking the input from the experts, Manufacturers, processors and specially the consumers.

By doing this, a better use can be made about what is now known about good or bad nutrition.
That what we eat and drink, may set the pattern of what kind of physical and mental health we will have.
Specially, if we live to become Senior Citizens.

More people are now living a longer "Life Span".
So more people will become sick and we can be sure that the individual and total cost for all kinds of medical related service.
Will also be going up and up.

Regardless of who provides the medical services. The Private Sector or other Public Institutions-

This is one more important reason of why the proper labeling, must be clearly stated, without any equivocations-

Based only on the truth about what is in or on, or is not in or on the products.
The rules and/or laws that are approved, must also apply to the foreign products sold in The U.S.A..

Regardless, of what will be said here and in all the other "Public Hearings".
The trying to evade the truth by a few, cannot be defended or accepted as a necessary business expediency.

Or as the right morality that most of us claim to profess and are practicing.

Jesus Villarreal Cardenas
105 Monclova
San Antonio, Texas 78207
Phone-Home 226-4865

Memo From Jay Plager, OMB Giving The Administration's Policy on Pre-Emption of Proposition 65

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 17 1989

Dr. Frank Young
Commissioner
Food and Drug Administration
5600 Fisher's Lane
Rockville, MD 20857

Dear Frank:

It appears that representatives of the various interests involved in California's Proposition 65, and particularly the food industry, are again seeking opportunities to have their case reheard. I gather that they are visiting a number of departmental and agency officials.

As you know, the Administration has determined that, until there is a significant change in the situation in California with regard to the State's implementation of Proposition 65, which change substantially implicates important Federal interests, no Federal preemptive action - either by regulation or otherwise - is warranted. That position was formally established in the Reagan-Bush Administration, after extensive review by a Working Group of which your were chair; the matter has been revisited by the Bush-Quayle Administration, and this position continues without change.

This office has been assigned responsibility for monitoring the situation, and for ensuring that the Administration is kept informed of important changes that may occur. Conflicting signals about the Administration's position by departmental or agency officials can create false hopes and encourage counterproductive efforts to undermine this carefully considered policy. They can also be a source of potential embarrassment to the President. If you have information that would be of value in our on-going monitoring, I would be pleased to hear of it. In the meantime, we know we can depend on you to protect the Administration's decision against such efforts to undermine it.

Sincerely,

Jay

S. Jay Plager
Administrator
Office of Information
Regulatory Affairs

c: Director Darman
Secretary Sullivan
Under Secretary Horner
Dr. Mason
Associate Director Holen

Senator **Metzenbaum**. Senator Hatch.

Senator **Hatch**. Thank you.

Mr. Commissioner, you brought out the regulations that are presently stalled at OMB. One of the major criticisms of giving FDA the authority to set labeling requirements instead of spelling them out in the statute is that the OMB will merely hold up the regulations or greatly change them.

Do you think that is a valid criticism? [Pause.]

It's a tough question.

Commissioner **Young**. Yes. I'm trying to figure out the appropriate answer there. Let me tell you truthfully, which is the appropriate way to answer all questions. I have found that the complicated, Byzantine approach of getting regulations out at times in about 3 to 4 percent of these regulations is Byzantine at best and torturous in the worst.

However, those are the regulations that usually are controversial, that usually require some degree of provocative thought. If you look at this track on the treatment IND, it probably exemplifies best the difficulty that came out——

Senator **Hatch**. This problem is very controversial, too.

Commissioner **Young**. That's right. And if you look at the hearing, it first occurred on the regulation before Mr. Weiss on April 1, 1987, in which I was pillared and posted for not having an efficacy standard that was tough enough.

Exactly 1 year later, April 1, 1988, I was pillared and posted for having an efficacy standard that was too difficult and too tight.

Now, that cataclysmic change in 1 year is interesting, because the efficacy change that was being spoken about in the second hearing was very similar to the argument that OMB made on the regulation before it came out. That argument being that the efficacy standard was too tight.

As you can see, Mr. Weiss' position and the original OMB position moved together over a period of about 1½ years. I don't think either side would necessarily agree with my view, but as a dispassionate watcher, I felt they did more together.

In controversial areas, I think this will occur, but the fact that this regulation was approved through the administration in less than 2 weeks on the Advance Notice of Proposed Rulemaking indicates that there is a strong reason to deal with this.

I think the health messages were the most controversial portion of everything we heard. Opinions ranged all the way from the FTC single study in the drawer to a very strong position by the State Attorney General in Texas which said we really want very firm evidence.

I think that in 3 to 5 percent of the regulations, there will be difficulty in OMB, there will be difficulty in passing laws, and that we should be prepared to deal with this. In summary, I am frustrated by the slowness at times.

Senator **Hatch**. Well, we are, too, as you can see. Senator Metzenbaum and I both agree that one of the best things we can do for the consumers in this country is get a uniform, reasonable labeling law. And if it could be done through regulation and it wouldn't be stalled at OMB, that may be a way of getting it done. It may just alleviate the necessity of having rigid Federal laws passed that may be gummed up as they go through the process—you haven't used the term "gummed up", but I think it was implied by some of the things you said, and I have to agree with you. We could come up with a perfect bill, go to the floor where everybody has their own ideas about what kind of amendments to bring up, and we might come up with something that would be highly inappropriate in the long run compared to what you might be able to do through appropriate flexible regulations now.

So I'm going to request that we put some pressure on OMB to try and allow you to do this. Some of your ideas are excellent—in fact, all of them are excellent—but I think FDA is certainly capable of coming up with what is in the best interest of consumers with regard to nutrition labeling, and that would save us all time, effort and money.

One of the major concerns in the consumer community against uniform food labeling standards is they say the FDA lacks the enforcement will to adequately enforce our food labeling and safety laws. I'd like you to respond to that criticism.

Commissioner YOUNG. Let me say very forthrightly, I don't think it is a lack of will; it is a lack of resources. It is to me a cruel joke on the part of the American people that we have about 8,000 inspectors inspecting beef and chicken in the United States. For example, each bird is looked at for 12 seconds. That costs about $375 million. The result of that is 1 out of 3 are contaminated with salmonella, and there are 1.7 million instances of chicken-borne disease per year.

The Food and Drug Administration has 900 inspectors, compared to 8,000.

Senator HATCH. About one-tenth as many for 25 percent of all the consumer products in America that come through your agency.

Commissioner YOUNG. That's correct. And in the case of the chicken, if I were to cook it, it would be a burnt offering; if my wife were to cook it, it would probably be delectable, but in any event, the salmonella would be dead. If you and I take medicines, we eat those raw. There is no processing. And without good inspection, we would be in deep trouble.

For example, in the case of a pacemaker, that is also implanted raw. Unlike the case of a medicine which, if you survive the first 8 hours, you can live well, if you've got a pacemaker contaminated with microbes, and it is put into your chest, you've got a major problem. Therefore, inspection is our problem. The number of inspectors, not their will.

Senator HATCH. Well, I know you are pleased that this committee passed out the FDA Revitalization Bill, and we are going to try and get it through this year, which of course would hopefully go a long way toward consolidating your 23 different offices on seven different locations in this area into one campus or one building, give you state-of-the-art equipment which you don't have now, give you some employees at reasonable rates of pay which you don't have—you haven't hired a scientific supervisor since, what, 1978?

Commissioner YOUNG. Well since 1978, we've not been able to recruit since 1978 the leadership from outside the agency, and this is a great burden. I want to congratulate you, Senator Hatch and the committee for reporting this bill out at 16-to-0. It heartens the agency immensely.

Senator HATCH. Well, we hope so, because I happen to believe that this little agency—and it is a small agency—is really one of the most important agencies in the world. Everybody in the world looks to FDA, and yet you don't have up-to-date equipment, you don't have a decent set of facilities, and you can't hire people because it is tough to hire people who can make 4 to 5 to 10 times as much in the private sector. It is hard to come here when it costs them $70,000 for a home in the outlying areas, and to come here means paying $400,000 for a home on a $68,000 salary—and that's a top salary. We've got to do something about that, and I don't mean to get off food labeling, but these issues have a role here, and they have to be brought out repeatedly so the American public starts to get mad about it. We have been pushing for years to try and get the Congress to do what really needs to be done to help this little agency out, which means so much to the consumers of this Nation.

Now, let me ask you this: The food industry has been chastised for inconsistent uses of the words "natural", "lite", "low", "reduced". How does the FDA, for instance, define "lite"? Is it the same definition as the U.S. Department of Agriculture, and do you believe that we should have uniform food characteristic claims?

Commissioner YOUNG. It is a very difficult system at this point. "Light" could mean light in color. "Light" Karo syrup is light-colored Karo syrup. "Light" beer is light in whatever it is light in.

Senator HATCH. So you don't presently define it.

Commissioner YOUNG. We don't define that. And "light" claims along the way are not defined.

Coming out of the hearings, people said that there should be definition. The other way to get this done is to have mandatory disclosure so that a consumer could say, "Well, my goodness, this 'light' is the same as regular; there is no difference at all."

I think my preference would be to define terms such as "light" because it has gotten to be so confusing.

Senator HATCH. I agree. Let me ask you, what would you do about products which have no protein, no fats, no potassium, for instance?

Commissioner YOUNG. There are a number of products that I think might fall outside of the labeling requirement. For example, tea, coffee and spices really have no nutritional value. They are merely for a variety in pleasure and taste.

I think we could develop a flexible scheme that would elect to remove those types of foods. Your soda water bottle would be a good example of the kind of thing that is of concern only for sodium. Therefore, do you have to put carbohydrates, zero, etc.?

Senator HATCH. That's good. I have a lot of other questions, but I'm only going to ask one more to your general counsel. I'll submit the rest of them for the record because we do have a long hearing today.

I would like to ask you if you believe there is sufficient legal authority to, by regulation, require all processed, packaged foods to be labelled? Now, let me say that my personal belief is that I don't believe that there is, because under current law, mandatory nutritional labeling occurs when (1) the food is fortified, or (2) the product makes a nutrition or health claim.

Have I stated that pretty accurately?

Ms. Porter. I think that that is a fair and correct statement of what the current regulation is, Senator Hatch. Do you want me to respond as to the general question?

Senator Hatch. Sure.

Ms. Porter. We have advised the agency that we believe that there generally would be authority, as the commissioner stated, to require mandatory food labeling on the theory that absent full requirements of food labeling, you can't tell—the consumer is perhaps misled—and therefore can't tell for sure the full effect of the product's intended use.

I think we could certainly also go so far as to say that to the extent that the statute does not spell out in more detail exactly what those requirements might be, we would certainly anticipate challenges to the regulation.

So to that extent, we might be in a better position to defend mandatory labeling on all processed foods if we had specific requirements in the statute. But that is not to say that we don't have the authority to attempt to do it by regulation, and we are satisfied that we would have a sound statutory basis for such a regulation.

Senator Hatch. But, at best it is clouded.

Ms. Porter. I don't know that I would go so far as to say that it is clouded.

Senator Hatch. But, it will be challenged. Is that what you are saying?

Ms. Porter. I think that depending on the final regulation that is adopted, and obviously depending upon how detailed it is, there will be those who will want to challenge it.

Senator Hatch. Yes, I think that's true.

Ms. Porter. It is always a safe bet in this area.

Senator Hatch. Yes, that's right.

Commissioner Young. I don't want to jump in casually on the segment of the law, but if you look at the 343(a)(1) section on adulteration and the 321(n) section and the 321(a) section, we believe that this has the capability to deal with adulteration. It has the capability of dealing with the information that is required, and to provide enforcement if there is not sufficient information. In the case of 371, that we could be able to go further on our authorities.

Now, it would be challenged, and what we would like to do as we proceed here is to identify for the Senate and for the House those areas that we think might be necessary for a fix or, as we go down the line, whether or not in fact we would need any legal authority.

My hesitancy is not that the legislation couldn't pass. I am afraid, as you have mentioned and I have seen in the past, that so many bells and whistles might get added to it that we would be unhappy with what came out.

My pledge to you would be that we are going to try very, very rapidly to now start drafting what we think are the key procedures. We have heard quite a bit. I think it has been exceptionally valuable that the House and Senate have gone this route, because competition is the American way of life. I think the administration has noted and noticed the activity in the Legislative Branch, and that is good. That will certainly help us get these regulations through.

Senator Hatch. That's good. I want to compliment you, Mr. Commissioner, for what you are trying to do, for the expertise you are putting into this, and for your intelligent and concise testimony here today. I think it has been very helpful to the committee, and we hope we can put together a bill that will go through, that will be a consensus bill, and that will be bipartisan. All of us up here will be working to do that with your help. We will appreciate it.

Commissioner Young. Thank you, Senator.

Senator Metzenbaum. One last question, commissioner.

It is obvious that your legal counsel thinks that, acting under the present law, there is a reasonable probability that your actions will be challenged.

Commissioner Young. That is correct.

Senator Metzenbaum. That being the case—and also the other aspect that at the very best, you would hope to get a regulation out for comment by April or May next year and then not be able to put it into effect until a year later. Knowing the usual slippage around here with respect to dates—and yours is an agency no different than any other—it seems to me that it makes an even stronger case for the FDA to be working with Congress to try to fashion a bill that will withstand the legal challenge. A bill that also can be put in place much more rapidly and put the show on the road rather than going through that which I sometimes feel is an interminable process by the regulatory route.

Would you care to comment on that?

Commissioner Young. I would love the chase of seeing how we can get this done best and most expeditiously. I think that we would work with you in regards to the legislative action. At this point in time, we feel that we would equally go forward on the regulatory route, and whoever crosses the goal line first crosses the goal line first.

I think we'll learn from each other on it. I do believe that the flexibility that we saw regarding how to deal with International relationships and additional issues, makes a great attraction for the regulatory route. I worry about the inflexibility that some of the laws may provide. That is my biggest concern.

Senator Metzenbaum. I would say that I'm less concerned at this moment about the International aspects than I am about the domestic concerns in this area. Once we've achieved our objective and zeroed in on the domestic concerns, I am certain we'll figure out a way to get the European community and any other community to work with us.

I would not want this very complicated subject, which brings in so many sectors of the American community and government, to be delayed or confused by whether or not the European community is comfortable with what we are doing.

I am very pleased to hear you say you will work with us to try to fashion a piece of legislation, while at the same time continue to move forward with your own program and the regulatory process. I think that is a good final point for us to be at at this point.

Joel Johnson, who has been working so assiduously on this subject, won't probably take longer than this afternoon until he is down at your office, starting to work with you to see if we can move forward together.

Commissioner **YOUNG**. Thank you very much, Mr. Chairman.

I don't want to leave you with the feeling that we were going to compromise our actions by inappropriate involvement with the EC. However, we are now beginning to realize the global nature of trade, and we wanted to take that into account. As the EC market enlarges further and further, we will want to be sure that the United States competitive stance is not unduly compromised by any of our regulations.

Senator **METZENBAUM**. Thank you very much, commissioner, Mr. Shank, Mr. Levitt, Ms. Porter and Mr. Grant. We thank you all for being with us this morning, and we look forward to working with you.

Commissioner **YOUNG**. Thank you very much.

Senator **METZENBAUM**. Commissioner, when you finished testifying, the light was let in. I am not sure what symbolism there is to that.

[The prepared statement of Commissioner Young follows:]

PREPARED STATEMENT OF FRANK E. YOUNG, M.D.

Mr. Chairman,

I am pleased to be here today to discuss nutrition labeling for foods. Like you, FDA believes it is time to reconsider all aspects of nutrition labeling. The public is demanding change in this area and deserves nothing less than our maximum efforts to accomplish this change. In that regard, Secretary Sullivan, Assistant Secretary Mason and I have undertaken an initiative to review FDA's nutrition labeling and other food labeling policies, with the ultimate goal of improving the food label to better meet the dietary information needs of the American consumer. I will discuss this initiative in detail later in my testimony. We hope that by working together with all interested parties, consumers, nutrition scientists, industry, and the Congress, we will facilitate bringing more useful nutrition information to consumers.

Good nutrition is essential to good health. "The Surgeon General's Report on Nutrition and Health" and the National Academy of Sciences' (NAS) report, "Diet and Health: Implications for Reducing Chronic Disease Risk" provide authoritative views on the evidence linking dietary patterns and health. Both reports concluded that Americans could substantially reduce their risks of heart disease, cancer, and many other chronic diseases through specific changes in eating habits. In its report, the NAS Committee on Diet and Health recommended, among other things, that Americans reduce consumption of total fat, saturated fat, cholesterol, and sodium; increase consumption of fruits, vegetables and complex carbohydrates; and maintain moderate protein intake. They estimated that reduction of fat and cholesterol could be expected to reduce the risk of coronary heart disease by at least 20 percent below 1987 levels. The Committee also noted that several countries with dietary patterns similar to those recommended in the report have about half the U.S. rates of diet-associated cancers.

Implementation of these recommendations means that individuals will need to be more knowledgeable and selective in choosing foods for their daily diets, health professionals will need to assist the public in better understanding the relationship between diet and their individual health needs, the food industry will need to provide nutritious food products consistent with these dietary goals, and government agencies will need to consider changes in food and nutrition programs and policies.

Adequate food labeling underlies any comprehensive program aimed at maintaining good health. Americans have become more health-conscious. They want to play a more active role in self-care and, as the link between diet and health has become increasingly clear, they seek accurate, useful and easily understood information about the foods they eat. What better vehicle for the dissemination of this information than the food label?

Nutrition Labeling Requirements

To understand the strengths and weaknesses of the current food labeling program, it must be viewed within the context of developments of the last twenty years, beginning with the White House Conference on Food, Nutrition and Health that took place in 1969. Following the Conference's recommendations, the FDA in 1970 began the process of deciding what the most important nutrients were that should be declared on food labels and the most useful means for expressing them to consumers. This process involved consultation with nutritionists and health professionals and the testing of various descriptive, visual and quantitative formats to evaluate their usefulness to consumers.

Based on the information that was gathered, in 1973 FDA promulgated nutrition labeling regulations. These regulations require that, when a nutrient is added to a food or a nutrition claim is made on the label or in advertising, the label must contain a quantitative listing of calories, carbohydrates, protein and fat and the percentages of U.S. Recommended Daily Allowances of protein, vitamin A, vitamin C, thiamine, riboflavin, niacin, calcium and iron per serving of food. An additional twelve vitamins and minerals may be optionally listed by manufacturers. The regulations also prescribe the format for providing the information. Nutrient quantities must be declared in relation to the average or usual serving, as determined by the manufacturer. Specific serving sizes are not prescribed by FDA regulations.

Also in 1973, FDA established the current regulations for the voluntary listing of fatty acids and cholesterol content as part of nutrition labeling. In 1978, regulations were promulgated to define and allow the use of terms such as "low" or "reduced" calories, and "sugar free."

Since then FDA has promulgated additional nutrition labeling regulations to address specific issues. In 1984, we issued a regulation requiring that sodium content be included as part of nutrition labeling. That regulation also defined terms for describing the sodium content of foods, such as "low sodium," "reduced sodium," and "sodium free." The need for sodium labeling was in response to information regarding the association between sodium consumption and hypertension.

In November 1986, in response to growing evidence of the relationship between blood cholesterol levels and heart disease, FDA published a proposal to amend the cholesterol and fatty acid labeling regulations. This proposal will establish definitions for the descriptive terms "cholesterol free," "low cholesterol," and "reduced cholesterol," and will require the inclusion of cholesterol and fatty acid content in nutrition labeling whenever a claim is made about either food component; currently, this is voluntary. A final rule based on the proposal is now being reviewed in the Department.

Lastly, FDA published a proposal, in August 1987, that would permit the use of appropriate health messages on food labels. Because of advances in knowledge about the relationship between diet and health, the agency proposed that health-related messages, when appropriately formulated for use on food labels, could provide valuable information to health-conscious consumers. Comments to the proposal demonstrated that consumers and consumer advocacy groups, industry representatives, health professionals and government officials generally are polarized in their views and expectations on this subject. Therefore, further evaluation is needed to resolve the issues.

Because of the importance of the food label to nutrition and health, FDA has initiated extensive outreach efforts to consumers through mailings and District Consumer Exchange Meetings to discuss these types of proposals and obtain their views about what should be done. We have also implemented nationwide educational campaigns to assist consumers in their efforts to effectively use the food label to improve their diets. FDA's sodium initiative is a good example of how the agency integrated public education, national nutrition monitoring, cooperative efforts with industry, and sodium content labeling to address different facets of the problem.

Current Problems

Since nutrition labeling regulations were promulgated there has been a steady increase in the amount of the food supply which bears nutrition labeling. Approximately 60% of FDA-regulated packaged foods provide this information, and two-thirds of this is voluntary. However, many consumer groups, health professionals and nutrition educators believe that more foods should be labeled, and those labels should enable consumers to more effectively formulate healthy diets.

When the original nutrition labeling regulations were promulgated, public health concerns generally focused on nutrient deficiencies rather than, as is now the case, on the potentially adverse effects of overconsumption of certain food components.- Since that time, information and issues have emerged which may now necessitate revision of the content and format of nutrition labeling. For example, since the role of cholesterol and fatty acids (in addition to total fat) in heart disease was not well defined when the nutrition labeling regulations were promulgated, information about these components was not required to be part of nutrition labeling. Food manufacturers' attempts to meet consumers' needs for this information have resulted in a proliferation of products of varying fat and fatty acid contents. The labels of these products frequently bear terms, such as "lite," "low fat," and "reduced fat," that are not defined under current regulations. Labeling inconsistencies in use of these terms render product comparisons difficult.

In addition, there are "standards of identity" regulations which define certain traditional foods, for example, mayonnaise and ice cream. They were originally designed to prevent economic deception, particularly with respect to foods composed of multiple ingredients.

The standards for certain dairy products, which mandate minimum fat levels, now may actually impede the acceptance of more "healthy" foods. Manufacturers have reacted by labeling such products with the traditional name, modified by the term "light," without stating how the product differs from the standardized food. Consumers are confused by this and by the lack of a definition for "light."

Since 1973, FDA has attempted to address consumers' changing nutrition information needs as new knowledge and issues have

Since 1973, FDA has attempted to address consumers' changing nutrition information needs as new knowledge and issues have emerged. The resulting nutrition labeling regulations, while addressing specific concerns, may not reflect the most recent advances in our understanding of the role of nutrition in health promotion and disease prevention. Furthermore, the regulations may seem inconsistent with the most recent scientific knowledge as well as information needs.

Good nutrition is a function, not of individual foods, but of a total diet over time. The conscious construction of a useful nutrition labeling program is complicated by the variation in healthful dietary needs among individuals according to such factors as heredity, age, sex, size, level of physical activity, and state of health. Complicating our efforts further is the growing awareness that subgroups within our population have unique nutrition information needs, for example, diabetics, the elderly, hypertensives (which disproportionately includes African-Americans), and pregnant women. In addition to providing the general dietary information we all need, labeling needs to help people like these select foods to aid their particular conditions.

The Secretary's Initiative

For these reasons, Secretary Sullivan, Dr. Mason, and I have initiated a timely, comprehensive review of the Agency's food labeling requirements.

To provide some background, Mr. Chairman, FDA communicates regularly, both formally and informally, with health organizations and consumer groups on labeling issues. In 1987 and 1988, FDA's Office of Consumer Affairs arranged a series of meetings with various consumer groups on a variety of consumer issues, including labeling. Most recently, in early 1989, I met twice with representatives of 13 health and consumer organizations to discuss food labeling reform, and specifically the health aspects of labeling. At these meetings, FDA received valuable insight into the vast spectrum of labeling issues that organizations and individuals wish the Agency to consider. Some of these issues are very specific. For example, groups representing the elderly want FDA to require changes in type size and use of contrasting colors on labels to better enable consumers with vision impairment to read this information. Health organizations, on the other hand, have suggested that labeling of specific fats and oils be given priority. Still other groups have suggested that the Agency should give priority to defining descriptive terms commonly used by food manufacturers, such as "natural" and "organic." Other groups raised issues that are more general in nature, such as whether nutrition labeling should be mandatory, and whether the content and format of nutrition labeling and ingredients statements needs to be updated and improved.

Because of the diversity of views expressed, Secretary Sullivan and I want to be sure to give all parties, national as well as local, an opportunity to be heard. Therefore, we have solicited input from all interested parties, including regional consumer and health organizations, state and local government agencies, and the food industry, as well as individual consumers.

More specifically, in August FDA published an Advance Notice of Proposed Rulemaking requesting public comment on a wide range of food labeling issues to help us determine what changes in food labeling requirements should be proposed by this Administration. We are soliciting comment in five areas:

1) whether to revise the requirements for nutrition labeling;
2) whether to change the nutrition label format on food packages;
3) whether to revise the requirements for ingredient labeling;

4) whether to formally define commonly used food descriptions and/or reconsider the use of standards of identity for certain foods; and

5) how to reasonably permit the use of messages on food labels that link food components to the prevention of disease.

In addition, we are soliciting public comment on some general questions, such as:

- Should FDA seek to expand nutrition labeling, particularly by making it mandatory for most packaged foods?
- What should be the Agency's priorities in deciding which changes to make in the food label, i.e., which changes are most important and which are least important?
- Since food labeling concerns change over time, what mechanism might be used in the future to assure that evolving concerns are addressed and that food labeling requirements reflect current scientific knowledge and consumer information needs?
- Are the public health benefits likely to be derived from revised food labeling sufficient to warrant the economic costs associated with such revisions?

FDA has already received 140 written comments in response to the August 8 Advance Notice, including 120 from individual consumers. To maximize the public's responsiveness to these questions, I am chairing four public hearings in different areas of the country. Each will focus on a different issue in order to ensure in-depth consideration of all aspects of the food label. The first hearing, in Chicago, highlighted nutrition label contents and demonstrated the public's desire for improved food labeling -- by consumers, health professionals and industry. I believe we may already see a developing consensus for some changes, for example, nutrition labeling on more foods, and certain modifications in the nutrients that must be declared.

We are also holding local "consumer exchange" meetings, chaired by FDA District Directors, in other areas of the country to ensure that we provide ample opportunity for the public to participate in this process. There are over 20 such meetings scheduled to take place between now and early December. We expect that number to increase.

In addition, the National Academy of Sciences - Institute of Medicine is currently under contract to analyze FDA's and USDA's food labeling policies and to provide recommendations and options for improving the food label. This effort will serve to complement the information we receive through this outreach initiative.

We will utilize all of this information to determine our priorities in food labeling and to structure a comprehensive approach to changes in the food label that seeks to balance the needs of the various constituencies concerned about this issue.

Conclusion

Mr. Chairman, FDA agrees with you on the importance of providing consumers with useful information about nutrition and health, and that the current label needs to be changed. We support your interest in the need for additional and improved nutrition labeling.

The public has a vital role in the development of a new approach to nutrition labeling that would best serve its needs. The Department's initiative is aimed at understanding those needs and developing labeling requirements that are most useful to consumers. I would hope that any legislation would share this goal and could benefit from the public record that will result from the Department's outreach efforts.

The Secretary, Dr. Mason, and I are trying to resolve these and other issues and want to work with you to find the best way to provide sound nutrition information for a healthier America. Nutrition labeling needs vary, however, and our outreach efforts tell us that the public does not agree on how best to meet these varying needs. We require more information before taking actions that effectively reflect the needs and desires of all the various segments of American society. That is why we are currently gathering this information from grassroots consumers, health professionals, state and local agencies, and the food industry, before initiating sweeping changes in food labeling requirements. This comprehensive approach was developed with one thought in mind, that the food label is in need of reform. We intend to accomplish that reform by seeking information from the widest possible range of commenters. Once that information is in, early next year, we can assess the totality of the issues and integrate the necessary components of an improved food labeling program, including guidance to industry for complying with any revised regulatory requirements, educational efforts to foster understanding among consumers, cooperative efforts with states, and a means of periodically monitoring and evaluating the adequacy of the nutrition labeling program for consumers. We find that such a "total" and integrated approach to health issues is most likely to result in programs that are successful in dealing with potential public health problems.

For example, FDA's seafood program, complex in its use of the states and other government agencies to accomplish its objectives, represents a cohesive effort to deal with problems that can be associated with seafood consumption, which are also complex. One way Americans are trying to improve their diets is by eating more seafood, a low-fat, low-cholesterol source of protein and other nutrients. As people consume greater quantities of seafood, it becomes even more critical that our seafood program include increased surveillance, monitoring, industry and consumer education, and research, as well as improved labeling, to better enable consumers to incorporate seafood into a healthy dietary plan.

Thank you for the opportunity to express the Agency's views. I will be happy to answer any questions.

Senator **Metzenbaum**. Our next panel consists of Dr. Daniel W. Nixon, vice president for professional education of the American Cancer Society; Nancy Chapman, vice chairman for the board of directors of the Nation's Capital affiliate, the American Heart Association; Ms. Corinne Jochum, Nebraska State coordinator for the American Association of Retired Persons; Ellen Haas, executive director, Public Voice for Food and Health Policy; Bruce A. Silverglade, director of legal affairs for the Center for Science in the Public Interest, and Dr. Nancy Wellman, president of the American Dietetic Association.

In a hearing of this kind where we have so many witnesses, and we have a third panel as well, we ask each of our witnesses to confine their remarks to 5 minutes. The yellow light will go on at the end of 4 minutes; the red light will go on at the end of 5 minutes, and the chairman's gavel will come down at the end of 5 minutes and 2 seconds.

Dr. Nixon, we understand you have a plane to catch, so we will be very happy to hear from you at this point.

STATEMENTS OF DR. DANIEL W. NIXON, VICE PRESIDENT FOR PROFESSIONAL EDUCATION, AMERICAN CANCER SOCIETY; NANCY CHAPMAN, VICE CHAIRMAN FOR THE BOARD OF DIRECTORS, NATION'S CAPITAL AFFILIATE, AMERICAN HEART ASSOCIATION; CORINNE JOCHUM, NEBRASKA STATE COORDINATOR, AMERICAN ASSOCIATION OF RETIRED PERSONS; ELLEN HAAS, EXECUTIVE DIRECTOR, PUBLIC VOICE FOR FOOD AND HEALTH POLICY; BRUCE A. SILVERGLADE, DIRECTOR OF LEGAL AFFAIRS, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, AND DR. NANCY WELLMAN, PRESIDENT, AMERICAN DIETETIC ASSOCIATION

Dr. **Nixon**. Thank you very much, Mr. Chairman. I do have a plane to catch and I appreciate your consideration.

It is a pleasure to appear before you to discuss an issue that is certainly near and dear to my heart and also to the American Cancer Society, and that is cancer prevention and the role of nutrition in cancer prevention.

The American Cancer Society has in the last few months established nutrition as one of its major focus areas as we head into the 1990's. I'd like to discuss with you the correlation between nutrition and cancer.

Nutrition is historically one of the major suspects in the cause of cancer. It ranks along with tobacco in the percentage of cases that are related. Historically, it is clear that as countries have gone through industrialization, the types of cancers change. We have cancers of or associated with nutritional deficiency in underdeveloped countries—and in this country before the Industrial Revolution. After Industrial Revolution occurs and as countries develop, the types of cancers change. We begin to have more cancers of the breast; we have more cancers of the G.I. tract; we have more cancers of the prostate. So there is some association there. The mechanisms are not totally worked out, but it is clear enough that there is a relationship between what we eat and the types of tumors that we get. In 1984, the American Cancer Society established a set of nutritional guidelines, and I'd like to briefly go over some of those with you.

The four major guidelines that are concerned with today's discussion are, first, avoid obesity. Now, why is obesity important? It is important because there is a relationship between the amount of energy that we take in and the types and numbers of tumors that we get. Fat is an energy storehouse. Again, the mechanisms are not clear. However, it is clear that cancer of the colon, cancer of the breast, cancer of the prostate and others are related to obesity. Therefore, avoiding obesity is a way to reduce cancer risk.

Second, decrease fat intake. We'd like to get fat intake down to 30 percent of total calories or less. Fat is an energy source, and there is a relationship between the number of cells that we have and how fast they divide and how much energy we take in. There is a corollary relationship between the energy we take in and the cell division and the kind of tumors that we get.

The third guideline is to increase fiber intake. Fiber intake is related to cancer of the colon and other types of tumors. It has recently been shown that a high fiber intake would, for the first time, decrease the number and size of polyps of the colon in an inherited type colon polyp situation. So fiber is important, and fourth, vitamins are also important.

This all relates to the need for better nutritional labeling, and I have brought along a few of my examples to show you, if I might. We are not endorsing or disparaging any of these products. They are good products, but there is a spectrum here of information or the lack of information that the consumer is faced with when he goes to the grocery store.

This is a soup. It is a good soup. It has vegetables in it, it has a lot of fiber in it, it has low fat, probably—but there is no nutritional information on this can at all. We have a good product here that the consumer would be totally bewildered about if they wanted to buy this in terms of decreasing fat, increasing fiber and decreasing calories. There is simply nothing on the can at all about nutritional content.

This is another good product. It is a spaghetti sauce. It has nutritional labeling, and it is a good product, but it doesn't have anything on here about fiber, and it is, in my mind, a little confusing about fat content. I would like to see fat expressed a little bit differently. Rather than just in terms of total grams, it should also be expressed as a percentage of total calories.

This product is a good product. It has made an attempt to get fiber on the label, but again the same criticism about fat content would be appropriate.

So we've got three good products here where the consumer would be better-served by a proper nutritional labeling approach.

I would like to thank Senator Metzenbaum and Senator Hatch for their continued support of ACS activities. I look forward to this bill's progress through the legislature and to a satisfactory outcome which will help our consumers and public decrease their cancer risk in a knowledgeable way.

Thank you very much.

[The prepared statement of Dr. Nixon follows:]

PREPARED STATEMENT OF DANIEL W. NIXON, M.D.

Mr. Chairman and Members of the Subcommittee, I am Dr. Daniel Nixon, Vice President for Professional Education of the American Cancer Society. I am pleased to have this opportunity to appear before you on behalf of our 2.5 million volunteers throughout the United States.

The American Cancer Society (ACS) commends Senators Howard Metzenbaum and John Chafee for introducing S. 1425, the "Nutrition Labeling and Education Act of 1989." This important legislation will enable consumers to make informed decisions concerning the foods that they purchase by having precise knowledge of the nutritional value of, and ingredients in, these products.

The American Cancer Society has established four areas of emphasis for the early 1990s: tobacco, increased community presence, the socioeconomically underserved, and most important for today's discussion, nutrition. These four focus areas are to be developed within a major strategic direction - cancer prevention and risk reduction.

The public is becoming increasingly aware of the dietary aspects of good health and this is reflected in the decline in total fat calories from over 40% to 37% in the last few years. It is important to help the consumer make informed decisions about the nutrition/diet, and thus the emphasis today on nutritional labeling.

The link between diet, the maintenance of health and the development of chronic disease has become increasingly evident in recent years. A number of national health organizations, including the American Cancer Society have identified several dietary excesses and several dietary deficiencies as adversely affecting the health of Americans. As a result, the American Cancer Society has issued a nutritional recommendation designed to help lower the risk of cancer and to respond to the public interest and concern in a responsible way. The guidelines illustrate the concept of cancer prevention as subtractive and additive.

Mr. Chairman, major public health problems at the turn of the century were very different from today. During the turn of the century nutritional deficiencies and infectious diseases were responsible for most of the disabilities and death. Today, antibodies and vaccines, agricultural advances, and economic improvements have decreased infectious disease and nutritional deficiency.

On nutrition, we have overshot the mark. Much chronic disease now arises from nutritional excess, as well as, overconsumption of fat, calories, cholesterol and saturated fat, in particular. It is estimated that over 34 million U.S. adults are overweight, for example, and the American Cancer Society and the Center for Science in the Public Interest found a markedly increased incidence of cancer of the uterus, gall bladder, kidney, stomach, breast, and colon associated with obesity. These diseases account for over 150,000 cases of cancer and over 120,000 deaths per year in the U.S.

Studies have shown that external factors may affect the initiation or promotion stages of cancer development, and statistical evidence implies that some types of foods may increase or decrease the risk for certain types of cancer. Because of the American Cancer Society's longtime commitment to cancer prevention, the Society adopted seven nutritional guidelines in 1984 to educate the public about the possible correlation between diet and cancer and to promote a healthier diet for Americans. Nutritional labels that are more clearly understood will help consumers to make food choices that will allow for healthier lifestyles overall. Following are the nutritional recommendations of the American Cancer Society:

1) AVOID OBESITY

Some studies, including the massive prospective study, Cancer Prevention Study I (CPS I) conducted by the American Cancer Society over a 12-year period, have shown that being overweight increases the risk for various types of cancer, such as colon, breast, gall bladder, and endometrium. CPS I also found a markedly increased incidence of cancers of the uterus, kidney, and stomach associated with obesity. In this study, when data for obese men and women, 40 percent or more overweight were reviewed, the women were found to have a 55 percent greater risk, and the men a 33 percent greater risk of cancer than those of normal weight. Experiments in animals had indicated much earlier that the incidence of cancer is reduced and the lifespan is lengthened by providing nutritionally adequate diets that maintained animals at close to ideal weight.

The 1988 Surgeon General's Report on Nutrition and Health also noted that international studies have found a correlation between total per capita calories and cancers of the breast, colon, rectum, uterus and kidney. For people who are overweight, weight reduction may be one way to lower cancer risk. S. 1425 calls for stringent labeling of foods, and this information could help overweight people reduce their weight by increasing their awareness of calories, and also help people of normal weight maintain their healthy body weight.

2) CUT DOWN ON TOTAL FAT INTAKE

A diet high in fat may be a factor in the promotion of certain cancers such as breast, colon and prostate. A comparison of population groups indicates that death rates for these cancers are directly proportional to estimated dietary fat intakes. More stringent labeling would require the types of fat to be broken down into saturated, unsaturated and total fat. In order for this information to be more easily understood by the consumer, the label should give an indication of how the amount of fat in the product compares to a recommended fat consumption level. The National Cancer Institute and the American Heart Association have recommended reducing fat intake to 30% of less of total calories. And, a benefit of decreasing the amount of fat in our diets is the corresponding caloric decrease. Again, we believe that S. 1425 will help achieve this goal.

3) EAT MORE HIGH FIBER FOODS

Fiber is a term used to cover many food components that are not readily digested in the human intestinal tract. These substances, abundant in whole grains, fruits and vegetables, consist largely of complex carbohydrates of diverse chemical composition. According to Cancer: Principles and Practice of Oncology, edited by DeVita, Hellman and Rosenberg, "Evidence is accumulating that a low intake of certain food groups may predispose to cancer, and indeed a lower consumption of green vegetables and fresh fruit has been one of the more consistent findings in dietary studies of cancer."

Studies have indicated that fiber intake, especially when measured as nonstarch polysaccharides, tends to be lower in high bowel cancer incidence regions., and there is some support from case-control studies that fiber protects against colon cancer. However, agreement on fiber's role in cancer prevention is not universal, with some scientists claiming that diets low in fiber are likely to be high in fat, which may play a more prominent role in cancer risk. Other scientists claim that a high fiber diet which includes many fruits and vegetables gains a protective factor through the micronutrients found in those fresh foods.

4) INCLUDE FOODS RICH IN VITAMINS A AND C IN THE DAILY DIET

Foods rich in vitamin A may lower the risk of cancers of the larynx, esophagus and lung, and it has been noted that mixed or multiple deficiencies in the diet may be involved in some tumors, especially among populations with high risk of esohageal cancer.

DeVita, et.al. note in Cancer: Principles and Practice of Oncology, that "...limited evidence suggests that vitamin C may protect against gastric and certain other cancer, perhaps by blocking against gastric and certain other cancer, perhaps by blocking the endogenous formation of nitrosamines."

According the 1988 Surgeon General's Report on Nutrition and Health, "...epidemiologic studies provide suggestive evidence that consumption of foods containing carotenoids, including the beta-carotene precursors of vitamin A, protects against development of epithelial cell cancer such as those of the oral cavity, bladder or lung. These studies have generally shown lower rates of cancer among individuals consuming the highest overall levels of vitamin A, carotenoids, or fruits and vegetables." However, the excessive use of vitamin A supplements is not recommended because of possible toxicity.

[illegible]) INCLUDE CRUCIFEROUS VEGETABLES IN YOUR DIET

It has been noted that indole compounds in cruciferous vegetables have been suggested in experimental and epidemiological studies to act as protective factors in decreasing the risk of colon cancer. A great deal of experimental work is in progress to determine that components of these foods are protective against cancer.

6) KEEP ALCOHOL CONSUMPTION MODERATE

Heavy drinkers of alcohol, especially those who also use tobacco products, are at unusually high risk for cancers of the oral cavity, larynx, esophagus and liver.

7) CUT DOWN ON SALT-CURED, SMOKED AND NITRITE-CURED FOODS

Smoked foods, such as ham, sausage and fish, absorb some of the tars that arise from incomplete combustion. These tars contain numerous carcinogens that are similar chemically to the carcinogenic tars in tobacco smoke.

There is limited evidence that salt-cured or pickled foods may increase the risk of stomach and esophageal cancer. In parts of the world where nitrate and nitrite are prevalent in food and water, as in Columbia, or where cured and pickled foods are common in the diet, such as in Japan and China, stomach and esophageal cancers are common; and there is good chemical evidence that nitrate and nitrite can enhance nitrosamine formation, both in foods and in our digestive tracts. Many nitrosamines are potent carcinogens in animals and may be human carcinogens.

Mr. Chairman, in most instances, exposure to cancer-causing agents takes place 20 to 30 years before a statistically significant increase in cancer can be detected. Only then can it be adduced that the increase in cancer may have been caused by exposure to specific carcinogens.

No concrete dietary advice can be given that will guarantee prevention of any specific human cancer. The American Cancer Society, nonetheless, believes that there is sufficient information to offer recommendations about nutrition that, in the judgment of experts, are likely to provide some measure of reducing cancer risk. The ACS guidelines are consistent with the maintenance of good health, but the American public must be able to translate knowledge of healthy nutritional practices into the purchase of foods that are consistent with nutritional guidelines. The "Nutrition Labeling and Education Act" takes an important step in providing consumers with clear information that they want and need. The American Cancer Society is committed to doing whatever it can to make S. 1425 into law. Following this important action, the Society will help educate Americans how to use these nutrition labels to their benefit. I will be happy to answer any questions you or your colleagues might have.

Senator **Metzenbaum**. Dr. Nixon, do I understand the American Cancer Society does support S. 1425?

Dr. **Nixon**. Yes.

Senator **Metzenbaum**. Thank you very much.

We are grateful to you for your support and look forward to working with you.

Dr. **Nixon**. If you will excuse me, I will go. Thank you.

Senator **Metzenbaum**. We understand you have to leave, and thank you so much for being here.

Senator **Metzenbaum**. Nancy Chapman, vice chairman of the board of directors of the Nation's Capital affiliate of the American Heart Association.

Ms. **Chapman**. Thank you, Senator Metzenbaum, for giving us the opportunity to testify on behalf of the American Heart Association.

I would like to start out and say as the vice chairman of the local Heart Association affiliate, I am actually representing about two million volunteers across the Nation.

I'd like to enter the full text of our testimony into the record, and I'd like to highlight.

Senator **Metzenbaum**. The testimony of all the witnesses will be included in the record in its entirety.

Ms. **Chapman**. Thank you.

The American Heart Association is pleased to support S. 1425, the Nutrition Labeling and Education Act of 1989. We urge speedy enactment of the legislative initiative so that important nutrition information reaches millions of Americans who want to reduce their risk of heart disease.

According to the FDA, American consumers want accurate, truthful, understandable information about the foods they eat. Yet in the present supermarket labeling of food products as well as advertising, one cannot help but be overwhelmed with the mixed, misleading and confusing messages. Many product labels don't disclose the amount of fat, let alone the type of fat in the foods. Others fail to disclose the cholesterol levels or sodium levels, or do so only if such labeling seems to promote the product for economic gain. Some labels make bold claims like "cholesterol-free", while at the same time the products have high levels of saturated fats. Still others tout claims of "low", "light", "lean"—yet we often don't know what these claims refer to, let alone how one quantifies that amount.

For the millions of adults who have to lower their blood cholesterol, shopping can be worse than working the *New York Times* Crossword Puzzle. We know and recognize the need for food companies to make economic profits on the sale of their foods and the need to sell the products based on the competitive advantages. But such actions must be conducted with health of the consuming public in mind.

If companies wish to use labels and claims to sell their products, it is important that those claims be accurate, scientifically-based, uniform, and not misleading.

We believe that it is time to bring order out of the chaos that exists in the food labeling arena. The American Heart Association hears from physicians, nurses and dieticians about how difficult it is to counsel patients on modifying their diets when the labels on the foods are incomplete.

Statutory reforms are urgently needed to bring uniformity, accuracy and readability to the food label. We applaud you, Senator Metzenbaum, and the other sponsors of the legislation. By requiring all packaged foods to carry a nutrition label, Congress will enhance the ability of consumers to make healthy food choices and to promote their health.

We endorse the inclusion of data regarding total fat, saturated fat, unsaturated fat, cholesterol, sodium, etc., as part of a mandated nutrition labeling.

It is also important that labels include both calories derived from fat and grams from fat per serving.

The American Heart Association seeks to ensure that consumers are not misled into believing that the foods which obtain a high percentage of their calories from fat can never be consumed. We wish to emphasize that foods such as oils and margarines, which are high in fats, may also contribute polyunsaturated fatty acids that are important to lowering the blood cholesterol. They should be incorporated as part of a nutritious, well-balanced diet.

We endorse the provision of legislation that calls on the secretary of Health and Human Services, in conjunction with the National Academy of Sciences, to develop a format for nutrition labeling. It is our hope that these governmental entities will seek out the insight and expertise that abounds in the public sector.

The American Heart Association firmly believes that future nutrition labels should be useful and readable.

As regards to the issue of health claims and comparative claims labeling, the American Heart Association endorses the legislative initiative which would ensure that if nutrition claims about the product are made, these claims are accurate, truthful and nonmisleading.

In recent years, a variety of public health initiatives have increased the public's awareness of the health benefits of reducing the amount and type of fat, cholesterol, and sodium in the diet. The American Heart Association has and will continue to be in the forefront of efforts to focus public attention on the benefits of low-fat, low-cholesterol diets. To be successful in carrying out an effective public nutrition education campaign, we must have the right tools.

The American Heart Association pledges its assistance to work with others in both the Federal and private sectors to develop programs to educate consumers on how to read and use the important labeling information enabled by the Nutrition Labeling and Education Act of 1989.

Thank you for asking us to contribute testimony.

Senator **Metzenbaum**. Thank you very much.

Our next witness is Corinne Jochum, Nebraska State Coordinator of the American Association of Retired Persons.

Ms. **Jochum**. Good morning, Senator.

The American Association of Retired Persons appreciates this opportunity to address the important issues of food and nutrition labeling and regulation of health claims on food products. These issues have a profound impact on the health and well-being of older persons, many of whom have been advised to modify their diets for medical reasons.

AARP believes the time has come to enact uniform, mandatory food labeling legislation such as S. 1425, the Nutrition Labeling and Education Act of 1989.

In brief, AARP recommends the following:

Require uniform nutrition labeling of all foods,

Include readily understandable information on total amounts of fat and saturated fat, cholesterol, sodium, sugars and dietary fiber the product contains per serving,

Establish standards for terms such as "light", "lean", "low fat" and "natural",

Regulate nutritional claims such as "high in fiber" or "no cholesterol" to prevent misleading statements,

Establish strict criteria for regulation of health claims on foods, and

Ensure that nutrition label formats are clear and readable.

Americans of all ages are beginning to modify their diets to make them more healthful, but older persons in particular are most likely to already have experienced first-hand the effects of debilitating disease or health conditions.

Further, many serious health conditions are more prevalent and life-threatening among minorities.

A 1988 AARP survey of persons aged 45 and over and the 1989 Food Marketing Institute survey of shoppers aged 40 and over both found that older persons are more likely than younger persons to read labels for ingredient and nutrition information.

The nutrition label can be a powerful tool for educating the public about healthy and unhealthy foods. In order to fulfill this potential, however, the label must be clear and easy to read. It must contain the information that is relevant to health, and it should not contain extraneous information that serves more to confuse than to inform.

Much of the information currently included on labels is extraneous.

Those components that are most important to include are amounts of fat and saturated fat, cholesterol, sodium, sugars and dietary fiber. Nutrition components should be listed per serving and according to reasonable and regulated serving sizes. A mandatory, uniform nutrition label should be required on all foods.

Finally, food products often are complex in content and may be high in both beneficial and detrimental properties. For this reason, particular attention should be paid to regulating health and nutrition claims on foods.

It is misleading to allow claims on products that contain nutrients whose effects may cancel or overshadow beneficial content. Such claims should be prohibited.

One way to prevent misleading nutrition claims is to establish trigger points for key nutrients like cholesterol, fat and sodium. In other words, a product with no cholesterol could only feature "no cholesterol" on the front label if it did not exceed pre-established trigger points for fat and sodium, and only if the standard version of that product contained cholesterol.

A related concern regarding health claims is the use of brand names that imply some health benefit. Such brand names should not be permitted unless that implied claim is validated or unless the package discloses on the front label whenever the product exceeds pre-established trigger points.

Health claims must be monitored to ensure that actual health benefits are discernible and that serving sizes are not manipulated.

Because diet and health are so closely linked, it is critical for consumers to have the tools they need to select or avoid particular foods. Improving nutrition labels will help consumers who want to select or avoid particular foods and improving nutrition labels will help consumers who want to select healthful products.

AARP appreciates the committee's interest in this issue, and our staff stands ready to assist you in the enactment of legislation.

Thank you.

Senator **Metzenbaum**. Thank you very much, Ms. Jochum, and I want to say I am very pleased to have the support of the AARP and look forward to continuing to work with your organization.

[The prepared statement of Ms. Jochum follows:]

PREPARED STATEMENT OF CORINNE JOCHUM

The American Association of Retired Persons (AARP) appreciates this opportunity to address the important issues of food and nutrition labeling and regulation of health claims on food products. We believe the time has come for the enactment of uniform, mandatory food labeling legislation such as S.1425 introduced by Senators Metzenbaum and Chafee. This issue has a profound impact on the health and well-being of older persons, many of whom have been advised to modify their diets to prevent or control the effects of health conditions. In brief, AARP recommends the following:

- Require uniform nutrition labeling of all foods;
- Include readily understandable information on total amounts of fat and saturated fat, cholesterol, sodium, sugars and dietary fiber the product contains, per serving;
- Establish standards for terms such as "lite," "lean," "low-fat," and "natural;"
- Regulate nutritional claims such as "high in fiber," or "no cholesterol" to prevent misleading statements;
- Establish strict criteria for the regulation of health claims on foods; and
- Ensure that nutrition label formats are clear and readable.

THE ROLE OF DIET AND HEALTH

In recent years, a growing body of scientific evidence has established definite links between diet and health. Earlier this year, the National Research Council of the National Academy of Sciences (NAS) released a report that synthesized the findings of nearly 6,000 studies into one set of dietary guidelines. The report called for a major reduction of fat in the American diet, more consumption of fruits, vegetables, and starches, and decreased use of salt and alcohol. In addition, other reports by the Surgeon General and the National Cancer Institute have called for greater consumption of dietary fiber.

Many prevalent diseases such as heart disease, cancer, diabetes and hypertension have direct links to diet. The NAS study maintained that heart disease could be reduced by at least 20 percent if the public followed its fat and cholesterol recommendations. Heart disease remains the leading cause of death in this country. It also has been estimated that 25 percent of all cancer deaths may be related to diet. Alternatively, certain dietary factors are thought to protect against particular forms of cancer.

Hypertension is a major risk factor for heart disease, stroke and kidney disease. Blood pressure normally increases with age, and, while not all hypertension is salt-sensitive, most hypertension among blacks and older persons can be treated by restricting sodium intake.

As American consumers become more aware of the relationship between diet and health, they need access to information that can help them make healthy food choices.

IMPACT ON OLDER PERSONS

Americans of all ages have begun to modify their diets to make them more healthful. But older persons in particular are most likely to already have experienced, first-hand, the effects of a debilitating disease. The following table indicates how the prevalence of certain diet-related, chronic conditions increases with age.

Prevalence of Selected Chronic Conditions by Age (1986)

	Total Rate	18-44	45-64	65-74	75+
Heart Cond.	7.5%	3.9%	12.3%	25.0%	31.9%
Hypertension	11.4%	6.7%	25.1%	38.5%	40.9%
Diabetes	2.6%	.9%	6.4%	9.2%	10.8%

(Source: National Center for Health Statistics)

Furthermore, many of these conditions are more prevalent and life-threatening among minorities. Whereas approximately 9 percent of whites 65 and over suffer from diabetes, this disease affects 17 percent of older blacks. Black women are 123 percent more likely to die as a result of diabetes than the national average. A black male is 90 percent more likely than the national average to die from stroke.

The sobering experience of a heart attack, stroke or other life-threatening condition often brings about profound changes in the lifestyle of individuals and their families. Previously desirable foods that are high in fat or sodium may begin to be reassessed in terms of their impact on health.

According to data compiled by the National Center for Health Statistics, older men and women consume less fat than younger persons. On an average daily basis, men 25-34 consumed 103 grams of fat compared to 68 grams for men 65-74. For women 25-34 the average daily fat consumption was 63 grams versus 46 grams for women 65-74. This may reflect a growing awareness among older persons of the need to modify their dietary habits or adhere to medically prescribed restrictions.

USE OF FOOD LABELS BY OLDER PERSONS

Last year AARP commissioned a survey of 2,001 Americans age 45 and over which included questions to assess attitudes toward nutrition. The responses to these questions follow:

"Would you say you have changed your thinking and your habits about what you eat over the past few years or have you not changed your eating habits very much?"

Changed-----------65%
Not Changed-------34%
Don't Know---------1%

"How often would you say you make an effort to read the labels on the food products you buy to determine what the contents and nutrients are -- always, most of the time, only sometimes, or never?"

Always-------------27%
Most of the time---30%
Only sometimes-----32%
Never--------------11%
Don't know----------*

"Do you think that having a printed list of a product's contents and nutrients on the label has increased your awareness of a product's nutritional value or not?"

Yes, increased-------73%
No, not increased----24%
Don't know------------3%

"Are you on any kind of a restrictive diet that means you can't eat certain foods, or not?"

Yes----------31%
No-----------68%
Don't know----3%

A follow-up question was asked to those who responded "yes" to being on a restrictive diet: "Do food labels as they currently are provide you with enough information about your dietary needs, or not?"

Yes----------67%
No-----------29%
Don't know----4%

It is evident that older consumers are aware of the relationship between diet and health and make use of nutrition labeling. Although many of those on restrictive diets believe that current nutrition labels provide enough information, three out of ten nutritionally-vulnerable persons do not.

These results are similar to information collected by the Food Marketing Institute (FMI) in its 1989 survey of trends, "Consumer Attitudes and the Supermarket." According to FMI, 65 percent of consumers 50-64 and 63 percent of those 65 and over are "very concerned" about the nutritional content of the foods they eat. FMI also found that shoppers 40 and older are more likely than those younger to read labels for ingredients and nutrition pretty much every time they shop. Over half (51%) of shoppers 65 and over nearly always read ingredient and nutrition labels.

FMI reported that two-thirds of older shoppers believe that food labels provide all the information they need, but of persons on restricted diets (of all ages) only 48 percent felt the food label provided adequate information. Notably, persons with lower educational attainment were more likely to find food labels adequate than persons with some college. This could indicate that persons with more sophisticated knowledge are more aware of what information may be lacking on existing labels.

In addition, many labels are so misleading that it would be difficult for consumers to truly know whether they are receiving all the information they need. Survey data indicating significant consumer satisfaction with current food labels should not deter Congress from improving the quality of this information and extending it to all food products.

The nutrition label can be a powerful tool for educating the public about healthy and unhealthy foods. In order to fulfill this potential, however, the label must be clear and easy to read; it must contain the information that is relevant to health, and it should not contain extraneous information that serves more to confuse than to inform.

PROBLEMS WITH CURRENT FOOD LABELING

The existing system for nutrition and ingredient labeling of foods has many flaws. First, nutrition labeling is required only on products that are fortified or make nutritional claims. In order for consumers to have the best access to health information, it is critical that all foods carry nutrition labels.

The relevance of information contained on the nutrition label needs to be reexamined. Current nutrition labels contain much information that has no significant bearing on public health. Information for certain vitamins and protein is largely extraneous and does not contribute to what consumers most need to know. Those components that are most important to include are amounts of fat and saturated fat, cholesterol, sodium, sugars and dietary fiber.

It is critical that amounts of these components be listed per serving, but it also is necessary to regulate serving sizes to ensure that they are reasonable. For example, some manufacturers have made their "serving size" ridiculously small to make it appear that the product has less sodium than what most consumers reasonably ingest. Likewise, an eight-ounce, single serving container of a product such as juice may list the "serving size" as six ounces, although virtually all persons would consume the entire eight ounces.

The ingredient list on products is important for persons who need to avoid particular items because of allergies, health conditions or sensitivity. AARP does not believe that an improved nutrition label would obviate the need for ingredient listing on all packaged foods.

In addition, current labeling criteria are not consistent for all food products. While labeling of most foods is regulated by the Food and Drug Administration (FDA), labeling of meat and poultry products is governed by the Department of Agriculture (USDA). There should be consistency between the labeling standards used on all food products. Although jurisdiction over USDA is beyond the scope of this committee, we would hope to see greater cooperation among the concerned parties to establish more consistency.

And/Or Labeling

The current ingredient list allows "and/or" labeling of fats and oils so that consumers are unable to determine exactly which type of fat has been used. This presents a serious problem for persons who must avoid saturated fats. While most vegetable oils are not saturated, coconut, palm and palm kernel oils are highly saturated and pose a definite health risk to persons who must restrict their cholesterol levels. A nutrition label that indicates the amount of saturated fat could diminish the need for information about the exact type of oil used, especially if the total amount is very low. However, the source of fat is still relevant information to which the consumer should have access.

In response to an AARP News Bulletin article on nutrition labeling published last summer, the Association received over 650 letters from members expressing their concerns about nutrition labels. By far, the most common complaint had to do with the "and/or" labeling. Most of these writers were aware of the relationship between saturated fat and cholesterol and knew that coconut and palm oils are high in saturated fat. The writers expressed frustration and anger about this labeling practice.

For example, M.P. of Wisconsin wrote:

> "Under doctor's orders to cut our cholesterol by the things we eat, we have been reading labels. But few labels tell us what we need to know. Too many read 'and/or may have coconut oil or palm oil.' That 'may have' is what is deceiving and

> [makes it] very hard to pick and choose....There should be more federal standards in labeling. Maybe then the companies would produce more healthy foods."

HEALTH AND NUTRITIONAL CLAIMS ON LABELS

A very important related issue has to do with health and nutritional claims on food labels. Adequate standards do not exist to define many of the terms that manufacturers use. Current regulations prohibit labeling that "represents, suggests, or implies" that the food "because of the presence or absence of certain dietary properties, is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom."

First, this prohibition on health claims is not enforced adequately. Furthermore, in 1987 FDA proposed allowing health messages on a limited basis. This proposal has been fraught with controversy. It is important for consumers to have the information they need to make healthy food choices, but it is problematic to claim that a particular food may reduce the risk of disease when viewed in isolation from overall dietary patterns. Therefore, any health claims allowed on food products would need to be scrutinized carefully for evidence of scientific validity and for assurances that the product does not also contain properties that are potentially harmful to health.

For example, there is a scientific link between calcium consumption and osteoporosis, a debilitating condition prevalent among older women. But a health claim on whole milk, promoting its calcium content, could encourage the consumption of a product high in saturated fat. (Whole milk derives 50 percent of its calories from fat.) Low-fat milk has all the benefits of whole milk, without the accompanying risks, and would be a more appropriate vehicle for health claim labeling.

In addition to what strictly would be called health claims, many manufacturers label food products in ways that **imply** they promote health by touting the presence or absence of certain nutritional characteristics. Many of the terms that manufacturers use are not regulated. For example, products often have terms like "all natural" in large print on the front of the package. This term is clearly used to imply a healthful product, but it currently is meaningless since it is undefined. There are a number of other specific components that are of particular concern.

"Light" or "Lite"

The use of terms like "light" or "lite" is not regulated. Health-conscious consumers may select products labeled "light" or "lite," assuming that they contain less fat or fewer calories. In fact, the term may refer to color or texture. Some products labeled "lite" actually contain more calories than the regularly-formulated product and many of them have excessive amounts of fat.

A recent article in "Changing Times" listed the percent of calories from fat in a variety of frozen "lite" dinners. They ranged from a low of 4 percent to a high of 54.6 percent. Many products promoted as diet meals greatly exceed the National Academy of Sciences recommendation that no more than 30 percent of calories be derived from fat.

Another example reported in "Changing Times" showed that a "lite" cocoa had 70 calories per serving compared to 110 in the regular mix. However, what appeared to be a 36 percent drop in calories was actually just a 15 percent reduction: most of the difference was achieved by shrinking the serving size from one ounce to three-quarters of an ounce.

Cholesterol Labeling

Current regulation requires that products listing cholesterol content include the statement, "Information on cholesterol content is provided for individuals who, on the advice of a physician, are modifying their dietary intake of cholesterol." This qualifier should be removed, since most Americans consume too much fat and would benefit by reducing their cholesterol intake. Continued use of this statement implies that cholesterol consumption is not a widespread concern.

There are no standards in force to define comparative amounts of cholesterol in products. A proposal has been pending at the Food and Drug Administration (FDA) since 1986 defining "cholesterol free" (2 mg. or less per serving), "low cholesterol" (20 mg. or less), and "cholesterol reduced" (at least 75 percent less cholesterol than the product it replaces).

Of particular concern to persons who must restrict their cholesterol, is the "no cholesterol" claim boldly displayed on many products that are made with highly saturated fats such as palm or coconut oil. This labeling is deceptive because consumption of saturated fats elevates cholesterol levels. The use of the "no cholesterol" claim was a frequent complaint in the letters AARP received from our members. For example, B.R. of Texas wrote:

> "I...feel strongly that there is far too much misleading and incomplete labeling on products. My husband had a coronary by-pass a year ago, and I have a high cholesterol count...We have made many changes in our diets, and I spend a lot of time in supermarkets reading labels....[M]any times a product will say (in large print!) no cholesterol and then fail to say that it contains saturated fat....Another problem is

> labeling of fat content which is not designated saturated or unsaturated."

Similarly deceptive claims include prominent display of the term "all vegetable shortening" on products high in saturated fat, or "no cholesterol" on products such as peanut butter that never contain cholesterol, but are high in fat.

Sodium

Regulations do address terminology pertaining to sodium in food products as follows: "sodium free" (less than 5 mg. per serving), "very low sodium" (35 mg. or less per serving), and "low sodium" (140 mg. or less per serving). The term "reduced sodium" can be used only if the product contains at least 75 percent less sodium than the regularly formulated product.

While this regulation is helpful, currently there is no way to prevent manufacturers from manipulating the "serving size" so their product can claim to be "low sodium" or "very low sodium."

Fiber

There is no regulation of terms associated with dietary fiber. As public awareness of the benefits of fiber, and more recently oat bran, have grown, manufacturers have increasingly promoted products containing these substances. This can be very misleading to consumers when a product labeled, "high in fiber" is also loaded with fat, thereby negating any possible health effects.

For example, one oat bran cereal which has four grams of fiber per serving also contains four grams of fat per serving, considerably more than most other cereals. In addition, the product is made with coconut which contains saturated fat. Another cereal that states prominently on its label, "with fiber nuggets," contains just two grams of fiber per serving.

Low-Fat

Existing standards for use of the term "low-fat" are not adequate. This is most troubling as it pertains to dairy products, especially milk. Current standards allow "two percent" milk to be labeled "low-fat." But two percent milk derives 38 percent of its calories from fat, a much higher percentage than is recommended for a healthy diet. Milk is one of the most prevalent sources of saturated fat in the American diet, but, since it also is a good source of calcium, it is promoted as a way to help prevent osteoporosis.

A more reasonable standard for the "low-fat" designation on milk would be to restrict this claim to products with one percent milkfat, or less.

RECOMMENDATIONS

Legislation to address these important issues should be enacted without delay. AARP believes that **a mandatory, uniform nutrition label should be required on all foods**. We understand that there are logistical problems in labeling many prepared foods such as those sold at the "deli" counter. Therefore, we believe it is most important to begin by requiring labels on all processed, packaged foods.

Such **labels should include a reasonable serving size in common household terms**. Consumers more readily understand amounts expressed in cups, tablespoons or even ounces than those expressed in grams or milligrams. Furthermore, serving sizes should reasonably correspond to amounts typically consumed and the number of servings per container should be evenly divisible. It is extremely difficult for consumers to obtain meaningful nutrition information from a product when the label indicates there are, for example, two and one-third servings per package.

Information listed, per serving, should include the number of calories, and amounts of fat and saturated fat, cholesterol, sodium, sugars and dietary fiber the product contains. These are the items of primary concern to consumers and include those that have the most direct relation to health concerns.

Nutrition labels should be clear and readable. While there are understandable logistical problems in conveying an adequate amount of information on a small package, AARP believes these difficulties can be overcome. Market research and field testing are needed to help develop guidelines for clear and understandable labeling standards. In order for consumers to be able to follow the NAS guidelines for a healthy diet, they must be able to translate the facts on the nutrition label into meaningful information.

More clear and specific regulation of terms such as "lite" and "lean" is needed, as are specific standards for terms like "high," "low," and "reduced." When a product claims to be high or low in a substance such as fiber, calcium, or fat, there must be some objective standard of comparison. Similarly, products that claim to have "reduced" fat, calories, or other substance should be measurably lower in such substance than the regularly-formulated product so that the term "reduced" has meaning.

Food products often are complex and may be high in both beneficial and detrimental properties. For example, many products that call attention to their fiber content are also high in saturated fat such as coconut oil. It is a disservice to consumers to allow nutritional claims on such products and they should be prohibited. This could be accomplished by establishing "trigger points" for pertinent elements such as cholesterol, saturated fat and sodium. In other words, a product with no cholesterol could be labeled "no cholesterol" on the front of the package only if it did not exceed a pre-established level of saturated fat and sodium.

Health claims on labels are even more problematic. If such claims are permitted, it is critical that mandatory nutrition labeling be a prerequisite. Also, health claims should be restricted to diet-health relationships that have a scientifically-proven basis. For example, an FDA final rule that has been pending at the Office of Management and Budget (OMB) since 1987 would have addressed five diet-health relationships: calcium and osteoporosis; sodium and hypertension; lipids and heart disease; lipids and cancer; and fiber and cancer. But allowance of any health claims on foods should be addressed with great caution.

Health claims must be monitored to ensure that serving sizes are not manipulated, and that actual health effects are significant. Consumers should have access to information that will help them choose health-promoting foods. But they should not be misled to believe that food products are more healthful than they really are.

Because diet and health are so closely linked, it is critical for consumers to have the tools they need to select or avoid particular foods. Improving nutrition labels will help consumers who want to select healthful products. AARP appreciates the committee's interest in this issue and our staff stands ready to assist you in the enactment of legislation.

Senator METZENBAUM. Ellen Haas, executive director of Public Voice for Food and Health Policy, whose voice is a consistent one around here concerning matters of this kind. We are happy to see you again. It is nice to see you personally.

Ms. HAAS. Thank you so much, Senator Metzenbaum.

To begin with, I'd like to commend you for your unflagging leadership, your unflagging commitment to see that the food label reflect the dietary and health needs of consumers.

At times, I'm sure it seems like a lonely fight, but it is very encouraging to see this filled room and the fact that you have consistently been there when consumers needed you.

Senator METZENBAUM. Thank you.

Ms. HAAS. Also, let me say that Public Voice, since its formation in 1982, has had a strong involvement and interest in refocusing the food label to meet contemporary consumer health needs. Through our food policy conference that we sponsor each March—which is the only forum that brings all parts of the food system together, from producers to consumers, manufacturers and food retailers, and we sponsor it with the National Food Processors Association—we have found that there is growing consensus and agreement today that we need to improve food labels.

However, I have been here before as you have been here before. I look back and realize I have testified at seven food labeling hearings, just having been in San Antonio. And when I spoke last week at the White House Conference on Food and Nutrition's 20th anniversary commemoration, I look back, and in 1979 there, emblazoned, were the enthusiastic recommendations that we need to have nutrition labeling. Well, it has been 20 years, and it has been 10 years since the FDA held their hearings around the country. Twenty-three hundred people submitted comments, and 500 people testified. Yet, we have had no legislation and no mandatory nutrition labeling, nor no finalized regulations as the commissioner is seeking.

However, I believe, as you do, that this time it is different. Today we have a very strong scientific foundation that has grown through these 10 years. It has become really solidified. We have a marketplace that has changed. In 1969, there were 8,000 food products. Today the consumer faces on an average 26,000 products in the supermarket.

Also, the consensus that the food label needs to change and reflect these changes in knowledge is something that is widespread.

The past decade has seen an outpouring of reports and recommendations. We all know them so well, from the Surgeon General's report to the National Academy of Sciences' report. Numerous public opinion studies further document the widespread consumer awareness about the relationship in diet and health.

Each year, the Food Marketing Institute does their trends report. In 1989 they found that 92 percent of the interviewed shoppers said that nutrition was an important or somewhat important factor of what they selected their foods on. However, 42 percent said the labels did not provide them the information they needed.

Consumers today face a nutritional minefield, with 26,000 packages and often conflicting messages on those front packages. In that environment, food labeling is worse than an embarrassment—

and everybody who brought their show-and-tell today knows the kind of embarrassment that exists. It really is a hazard to public health.

Nutrition labels mostly provide confusing, misdirected information, basically unchanged since 1973. It has been voluntary, and except for products that claim a nutrition benefit or are fortified, the result is that less than 60 percent of the foods regulated by FDA have no nutrition labeling, and in no case is the type of fat or amount of cholesterol reflected in that listing.

Public Voice strongly supports your efforts in S. 1425. These efforts would, at long last, extend mandatory nutrition labeling to most foods regulated by FDA, by focusing the label on those nutrients that are directly related to the most serious American health concerns.

Yet, S. 1425 goes beyond just the simple requirement of nutrition labeling in several ways. In addition to packaged foods, this bill also provides for nutrition information for fresh fruits and vegetables. It has been argued that you can't individually label fresh fruits and vegetables, which is true. We are not expecting every tomato to have a nutrition label, or every string bean to have a nutrition label. Rather, we expect to provide consumers with nutrition information for this healthful section of the supermarket by either tagging or point of purchase signs.

Second, S. 1425 deals, both protectively and pragmatically, with an area where consumer confusion abounds. In today's supermarket, manufacturers often, voluntarily, add statements on the front label of their product proclaiming its value in reducing the risk of a particular disease. Too often, such claims mislead the consumer because they are false. They use terms for which no regulatory standards exist or because they omit information that is critical.

S. 1425 addresses this problem by providing for strict regulation of such nutrient and health claims. The amended bill provides a very pragmatic basis by stating only that claims be used if there is no scientific disagreement about the claim. Though this standard is very strict, it still falls short of your original one of consensus. However, I believe this proposed standard provides an opportunity for the industry to have claims, while at the same time allows consumers to have strict protections against misleading claims.

I am pleased that in the amended legislation you have included the requirement for the Federal Government to sponsor widespread consumer education programs to explain how to use the new labels required by S. 1425. Nutrition labeling can be insurance for the American public. Prevention and control of major disease depend on individuals making personal choices and changing their eating behavior. This goal requires adequate nutritional information on food products.

I am delighted to support your bill.

Senator **Metzenbaum**. Thank you very much, Ellen. We are happy to have your organization's, as well as your personal support for this legislation. You have contributed much on this subject over a period of years, and we look forward to continuing to work with you.

[The prepared statement of Ms. Haas follows:]

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PREPARED STATEMENT OF ELLEN HAAS

Good morning, Mr. Chairman, Members of the Committee. My name is Ellen Haas and I am the Executive Director for Public Voice for Food and Health Policy, a non-profit consumer research, education and advocacy organization committed to ensuring a safe, nutritious and affordable food supply for the American public.

Public Voice has a long history of interest and involvement in the field of food policy and nutrition labeling and has worked for improvements in the food label since our formation in November of 1982. Each year we have convened a National Food Policy Conference, bringing together more than 400 representatives of all parts of the food system. This year's conference was entitled "Promoting Healthy Eating - Challenges for a New Administration," and by the end of the two-day conference it was very clear that there is a strong consensus among all segments for improved food labeling policies.

We also co-sponsored a Food Labeling Issues Roundtable last June with the Food Marketing Institute. With representation from consumer groups, the industry and the nutrition community, it was apparent that the participants agreed that reform of the food label is necessary.

For the record, we are including with our testimony our recently published policy document, "Nutrition Labeling: Piecing Together a Healthy Diet."

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During the past decade, Americans have heard from private health organizations as well as our government agencies about the critical link between what we eat and the state of our health.

The 1990 Dietary Guidelines issued by the U.S. Department of Agriculture and the Department of Health and Human Services -- the two agencies that oversee food labeling -- called for diets lower in fat and cholesterol and higher in fiber.

"The Surgeon General's Report on Nutrition and Health," published last year, pointed out that what we eat may affect our risk for those illnesses which, taken together, account for more than two-thirds of all deaths in the United States. These leading causes of death include coronary heart disease, stroke, atherosclerosis, diabetes, and certain types of cancer.

In a landmark report published in March 1989, "Diet and Health: Implications for Reducing Chronic Disease Risk," the National Academy of Sciences recommended that Americans cut back fat consumption to less than 30 percent of total calories, with saturated fat below 10 percent of calories.

These results build on previous recommendations from the American Heart Association, American Cancer Society, and the National Institutes of Health.

The fact that the American consumer is becoming increasingly aware of the link between diet and health is reflected in the results of [illegible], a national poll conducted by [illegible] for the Prevention [illegible]. [illegible] "Prevention Index" survey, [illegible] percent of adults said they "try a lot" to avoid eating too much cholesterol, up [illegible] percentage points from [illegible]. In addition, [illegible] percent of American households [illegible] cholesterol food products during the [illegible], up [illegible] percentage points from [illegible] and [illegible] percentage points from [illegible].

dietary choices most conducive to health. Food manufacturers should be encouraged to make full use of nutrition labels."

Yet food labeling in the United States today is worse than an embarrassment; it is a hazard to health. Nutrition labels mostly provide confusing and misdirected information. Basically unchanged since 1973, nutrition labeling is voluntary except for products that claim a nutritional benefit or have been fortified.

This federal voluntary system simply has not worked. Today less than 60% of food products regulated by the Food and Drug Administration have some form of nutrition labeling, and in no case is the type of fat or amount of cholesterol required to be listed.

Public Voice supports S.1425, which would change this situation by extending mandatory nutrition labeling to most foods regulated by FDA and by focusing the label on those nutrients that are directly related to the most serious health concerns. These reforms alone will go a long way toward giving consumers the information they need to choose healthy diets.

Yet S.1425 goes beyond a simple requirement of nutrition information on processed food labels in several important ways. Public Voice is pleased to note that, in addition to packaged foods, this bill also provides for nutrition information for fresh fruit and vegetables. While it has been argued that fresh produce cannot be individually labeled as can other food products, it is possible to provide consumers with nutrition information for this most healthful section of the market by tagging, or placing signs at the separate fruit and vegetable bins.

In addition, S.1425 deals with an area where consumer confusion abounds. In today's supermarket, those nutrition labels that do exist are often impossible to read or make unsubstantiated or deceptive claims. Manufacturers often voluntarily add statements - so-called health claims - on the front label of their product proclaiming the value of their product in reducing the risk of a particular disease. Some products bear nutrient claims in bold lettering proclaiming, for example, that the product is "Cholesterol-free" or is "low sodium." Too often, such claims mislead the consumer because they are false, because they use terms for which no regulatory standards exist, or because they omit information that is critical to evaluating these claims.

S.1425 addresses this problem by providing for strict regulation of such nutrient and health claims. Claims must be authorized by the Secretary of HHS and based upon a scientific consensus among experts qualified by scientific training and experience to evaluate such claims. Definitions of such comparative claims as low, lite, medium, reduced, would have to be defined by FDA.

Public Voice does suggest a provision be added to this legislation requiring the federal government to sponsor a widespread consumer education program to explain to consumers how to use the new labels required by S.1425. Consumers need to understand more clearly how to incorporate the information provided by the label into plans for well-balanced diets. Target strategies for low-income consumers with tight budget constraints would be especially helpful.

Nutrition labeling can be invaluable for the American public. Prevention and control of major diseases depend on individuals making personal choices and changing their eating behavior with better selections of healthful foods. This goal requires adequate nutritional information on food products.

S.1425 gives consumers far more control over their diets and, therefore, their health. Public Voice supports this vital public health measure and we respectfully urge this committee to give S.1425 its support also.

Thank you.

Senator **Metzenbaum**. Our next witness is Bruce A. Silverglade, director of legal affairs at the Center for Science in the Public Interest.

Mr. Silverglade.

Mr. **Silverglade**. Good morning.

I'd like to thank you for this opportunity to testify. On behalf of our 175,000 members, we want to thank you for introducing this legislation. We look forward to working with you toward its prompt enactment.

Food labeling reform has been on the consumer agenda for many years, but what has been made absolutely clear today is that food labeling reform is now a public health priority. The grounds for food labeling reform are set out fully in our report entitled, "Food Labeling Chaos: The Case for Reform" and I would request that it be incorporated into the record of this hearing.

I would like to bring up one point from our report. Surveys taken by the FDA show that most Americans are aware of the risks of an improper diet and are trying to make the dietary modifications that health experts recommend. Unfortunately, other surveys by FDA confirm that the fight to reduce diet-related disease comes to an abrupt halt in the aisles of the supermarket where the consumer is confronted by a minefield of misleading nutrition claims.

One of the most important parts of S. 1425 deals with these misleading nutrition and health claims. It is important, because the benefits of complete nutrition labeling will never be realized fully unless the FDA is required to strictly regulate these nutrition content and disease prevention messages.

These claims, slapped boldly across the fronts of food labels, are often the first source of nutrition information that busy shoppers notice. A food that is prominently labeled as "light", "high fiber" or "reduces cholesterol", may appear to be healthful, notwithstanding the nutrition content disclosures found in small print on the backs of food labels.

I have brought a few examples here today.

We have Safeway oat bran doughnuts. Safeway, of course, is the largest grocery retailer in the country. Earlier this summer they came out with new oat bran doughnuts. "Reduces cholesterol", it says right here on the package.

Senator **Hatch**. Somebody has eaten one of those—or is that a defective package? [Laughter.]

Mr. **Silverglade**. For food safety reasons, I should have thrown them all out. They have been around for a while.

Each doughnut has 10 grams of fat per serving, although it is labeled as "reduces cholesterol".

Misleading nutrition claims extend to the brand name. Therefore, it is very important that your legislation be clarified to indicate that the restrictions about the nutrition claims extend to nutrition claims implied within the brand name of the food.

For example, let's examine Weight Watchers. One would think if you were on a diet, you could eat Weight Watchers. In fact, this product, and many Weight Watchers products, provide more than 45 percent of their calories from fat. Now, as we know, the guideline that health authorities recommend is no more than 30 percent of our calories from fat.

Weight Watchers was asked about this inconsistency. In a recent issue of Ad Week's *Marketing Week* magazine, they stated that the 30 percent of fat guidelines applies to the total diet, not to individual foods. As *Marketing Week* concludes, that means that consumers should expect their diet to compensate for eating Weight Watchers.

I'd like to spend my remaining time talking about the relationship between the States and the Federal Government in the area of food labeling. Section 4 of your bill allows the attorneys general across the country to enforce the Federal law. This is essential, because as FDA has conceded here today, it lacks the resources to exercise the agency's existing authority to prevent misleading labeling. As a result, actions against deceptive labeling are few and far between. Fortunately, State attorneys general have stepped in across this country and have protected consumers from problems in this area.

Section 6 of your bill is entitled "National Uniform Nutrition Labeling." This provision does more than its title implies. Section 6 not only preempts States from departing from the nutrition labeling requirements of section 2 of your bill. It also prohibits State attorneys general, State health departments, State agriculture departments and other State and local agencies from taking any action inconsistent with the legislation, including those sections dealing with nutrition and disease prevention claims. Thus, we are not merely talking about a national uniform nutrition label, but also about preemption of numerous State and local enforcement officials who have been relied on so often during the past 10 years to take action against misleading claims.

Therefore, State preemption of any type must be approached very cautiously. In this case, preemption of States in the area of regulating misleading label claims, should not even be considered, unless Federal law sets standards that are as strong or stronger than the standards currently being employed by State officials and authorizes State and local officials to enforce Federal law. Your bill currently achieves both of these goals. But we are going to look out for attempts to weaken the legislation on this point.

Major food industry trade associations claim that they support mandatory nutrition labeling. However, what they have actually been doing over the last few months is, under the guise of national uniformity, been seeking legislation that would preempt all State laws governing food labeling, not just those concerning nutrition labeling matters and health claims that your bill addresses. Under this approach, nutrition labeling reform would come only at the cost of nullifying State laws on numerous other matters for which your legislation establishes no national framework. We certainly object to that legislation.

I'd like to thank you, and I'd be pleased to answer any questions.

Senator METZENBAUM. Thank you very much, Mr. Silverglade. I am happy to have your support in connection with our bill, and I look forward to continuing to work with you.

[The prepared statement of Mr. Silverglade follows:]

PREPARED STATEMENT OF BRUCE A. SILVERGLADE

Good morning. I am Bruce Silverglade, Legal Director of the Center for Science in the Public Interest (CSPI). We wish to thank you Mr. Chairman for this opportunity to testify in support of S. 1425, the Nutrition Labeling and Education Act of 1989 and wish to congratulate Senators Metzenbaum and Chafee for introducing this much needed legislation.

CSPI is a national non-profit consumer advocacy organization. We are supported by more than 175,000 dues paying members. We have been concerned about improving the quality of food labeling since we were formed in 1971.

Food labeling reform has been on the consumer agenda for many years. Yet, as recognized recently in both the Journal of the American Medical Association and The New England Journal of Medicine, food labeling reform has become a priority of the medical and health communities as well.

The grounds for food labeling reform are set out fully in our report entitled Food Labeling Chaos: The Case for Reform, which I would request, along with the aforementioned articles, be incorporated into the record at this time. As detailed in our report, diet related diseases claim hundreds of thousands of lives each year. Surveys taken by Food and Drug Administration (FDA) show that most Americans are aware of the risks of an improper diet, and are trying to make the dietary modifications that health experts recommend.

Unfortunately, FDA surveys also confirm that the fight to reduce diet related disease often comes to an abrupt halt in the aisles of the supermarket, where consumers are confronted by a mine field of misleading labeling claims and a paucity of meaningful nutrition information.

S. 1425 requires the FDA to take important steps that will help correct these problems. The bill requires FDA regulated food labels to disclose the content of key nutrients, in a format that consumers can readily understand and use. It also requires FDA to set standard definitions for nutrient content claims and to ensure that disease prevention claims have a sound scientific basis and do not misleadingly highlight single nutritional attributes of foods.

S. 1425 does not address all of the concerns discussed in our report. For example, the bill does not cover meat and poultry products. Nor does it address the matter of standards of identity that sometimes mandate unhealthful amounts of fat or other nutrients in certain foods. The bill however, does take major steps towards making the food label a tool that the American public can use to make the dietary changes that they have been advised to make and are trying to attain. Accordingly, we enthusiastically support this measure.

We are pleased to provide the following specific comments on S. 1425:

Section 2 -- Nutrition Labeling:

(a) Labeling requirements - We support the requirements in this section of S. 1425. The bill requires information about the precise nutritional components that health authorities agree consumers should consider when choosing foods. This label information will allow consumers to follow the advice of health authorities to reduce consumption of fat, saturated fat, cholesterol, sodium and sugar and to increase consumption of foods rich in starch and fiber.

The Committee however should consider requiring the disclosure of the percentage of calories from fat and saturated fat as opposed to the number of calories from these nutrients. Consumers are increasingly aware of the advice of health authorities to consume no more than 30 percent of calories from fat. S. 1425 however does not provide the consumer with the information that he or she needs to readily adhere to this guideline.

(b) Regulations - The National Academy of Sciences report on recommended labeling formats is an essential part of this legislation. Nutrition information is of little use unless it is disclosed in a manner that will allow most consumers to readily observe it, comprehend it, and relate it to their total daily diets. To ensure that this objective is satisfied, we urge the Committee to see to it that the NAS bases its recommendations on appropriate consumer studies designed to evaluate the effectiveness of a variety of possible label formats.

Section 3. Claims:

This section of S. 1425 is of key importance. The benefits of complete nutrition labeling will never be realized fully unless the FDA is required to adequately regulate nutrient content and disease prevention claims. These claims, slapped boldly across front labels, are often the first source of nutrition information that busy shoppers notice. A food prominently labeled as "Light," "High fiber," or "Reduces Cholesterol" may appear to be healthful notwithstanding the nutrient content disclosures found in smaller print on the backs of food labels.

Presently, all too many products in the grocery store contain nutrient content and disease prevention claims that are based on outdated, inconsistent, or inadequately enforced regulatory standards. Sometimes, no regulatory standard at all exists to control such label claims. As a result, misleading claims have proliferated. These claims aren't just deceptive, they're dangerous!

S. 1425 helps put an end to the deception by prohibiting such label statements until the FDA issues regulations governing the meaning and use of these claims. The bill requires the FDA to base regulations on sound nutritional criteria to ensure that foods that make claims are in fact as healthful as they purport to be, and do not have any serious nutritional drawbacks. Express disease prevention promises could not be made if there was significant disagreement about the claim within the scientific community. This requirement will prevent food manufacturers from basing these claims on inadequate or tentative data.

We hope the Committee will strengthen S. 1425's provisions governing misleading claims in two ways. First, the Committee should clarify that the types of label statements covered by the bill's requirements include "Organic," "Natural," and similar claims. These claims implicitly characterize the nutritional value of the food without mentioning any nutrient by name.

Second, the Committee should require that disease prevention messages on food labels be based on the totality of the scientific evidence before the FDA. This bill recognizes that these claims are uniquely powerful in persuading consumers. By requiring that claims be based on the totality of scientific evidence before the FDA, this bill can help ensure that such claims will be consistent with mainstream scientific opinion.

Section 4. State Enforcement:

This provision is essential to ensure that the reforms in the S. 1425 will have practical effect. FDA has conceded that it lacks the resources to exercise the agency's existing authority to prevent misleading labeling. Fortunately, state attorneys general have supplemented FDA's efforts by acting under parallel provisions of their state laws. However, they currently lack legal authority to directly enforce the federal law in federal court. As a result, such actions have legal effect only within the states in which they are brought. This bill would help ensure that these actions have uniform nationwide effect.

Section 6. National Uniform Nutrition Labeling:

This provision does more than its title implies. It not only preempts states from departing from the nutrition labeling requirements in Section 2 of this bill, it also prohibits state attorneys general, state health departments, state agriculture departments, and other state and local agencies from taking any legal action inconsistent with Section 3 of this bill which governs nutrition and disease prevention claims. Thus, we are not really talking just about a national, uniform nutrition label, but also about the preemption of numerous state and local enforcement officials who have been increasingly relied on in recent years to take action in this area.

State preemption of any type must be approached cautiously. In this case, preemption of states in the area of regulating misleading label claims should not even be considered unless the federal law:

1. Sets standards governing misleading label claims that are as strong, or stronger than the standards currently being employed by state officials, and

2. Authorizes state and local officials to enforce the federal law.

If either of these two preconditions cannot be met, state preemption in the area of nutrition and disease prevention claims should not even be considered.

Moreover, it is also clear that this bill should not preempt states in any areas of food regulation beyond the matters addressed in S. 1425. We are pleased that several major members of the food industry have indicated their support for this, or portions of this bill, without demanding further preemption of state laws governing food labeling matters beyond the scope of S. 1425.

Unfortunately, some of the major trade associations claiming to represent the industry on this issue are still attempting to use this legislation as a vehicle to gain preemption of practically all state laws and regulations governing the food label. Under the guise of so-called "National Uniformity," these associations are supporting S. 1505, legislation introduced by Senator Hatch, that would preempt all state laws concerning food labeling, not just laws concerning the nutrition labeling matters that S. 1425 addresses. Under this approach, nutrition labeling reform would come only at the cost of nullifying state laws on numerous matters for which the federal bill establishes no national framework. For example, S. 1505 would preempt:

* A Maine law requiring disclosure of the use of post-harvest pesticides on produce;

* A New York law on the labeling of kosher foods;

* A Massachusetts law requiring unit pricing of foods;

* A Washington law requiring freshness dating of foods; and

* A California law requiring food companies who use lead soldered food cans to warn the public that the product may contain a substance known to the state to be a reproductive toxin.

These laws have nothing to do with reducing cholesterol or cutting back on the fat in our diet. Thus it would be ludicrous to preempt such laws in a bill that does not even purport to address such matters.

Since S. 1425 was originally introduced, The Grocery Manufacturers of American (GMA) and the National Food Processors Association (NFPA) claimed that they reversed their traditional opposition to nutrition labeling reform and that they now support legislation that would achieve this goal. Yet it has become clear that these associations are more interested in using the legislative process to gain preemption of unrelated state laws than in seriously working on a nutrition labeling reform bill. Thus, we can only conclude that GMA's and NFPA's pronouncements are less than sincere. However, we again renew our invitation to sit down with these organizations and work seriously on nutrition labeling reform legislation if that is in fact what they are interested in achieving.

We wish to thank the Committee for this opportunity to testify and would be pleased to answer any questions.

Senator **Metzenbaum**. Dr. Nancy Wellman, president of the American Dietetic Association.

Dr. **Wellman**. Good morning, Chairman Metzenbaum and Senator Hatch. I am representing 58,000 professional members of our association, and that includes over 90 percent of all registered dieticians in the entire country. I am also a faculty member in the Department of Dietetics and Nutrition at Florida International University in Miami. I speak in strong support of the Nutrition Labeling and Education Act.

Dieticians, as you know, are food and nutrition experts. In our everyday work, we use food labels to try to help people translate the sometimes confusing science of nutrition into the art of choosing healthier foods.

Today, consumer interest is sky high in nutrition. Yet, even intelligent, well-motivated people are confused and are actually being misled by today's labels, their health claims, and ads about foods. Just the other day, my tennis partner asked apologetically if she could ask a dumb question. She wondered whether cholesterol and fat are the same thing. She also was surprised when the bananas that she brought home from the supermarket had a "no cholesterol" sticker on them.

While people are trying to avoid excesses in foods such as calories, sodium, salt, fats, oils, cholesterol and preservatives, today's labeling regulations are still focusing on preventing deficiency diseases which are primarily nonexistent in this country. Americans want to eat healthier to decrease their risks of certain devastating chronic diseases such as cancer, heart disease, diabetes, obesity, osteoporosis, kidney disease and dental caries.

Therefore, our association supports mandatory, uniform labeling of all packaged and processed foods.

Although S. 1425 addresses only FDA-regulated foods, we believe that there is a need for one uniform set of labeling regulations for both FDA and USDA. We also feel that it is time for stronger FTC regulations on advertising of nutrition and health claims for the benefit of the American public.

Changes to the labeling regulations have been proceeding piecemeal, and it is time to completely overhaul the system. The diet and health report by the National Academy of Sciences gives us a fine foundation for this overhaul.

We believe that nutrition information on food labels as addressed in S. 1425 and in food advertising governed by the Federal Trade Commission can improve the food literacy of Americans as well as their nutritional status.

We are realistic, and we know that there is a limit to the amount of information that can be placed on a label. Some micro nutrient information required today can be replaced with more useful information. Key nutrients today we believe are total calories, protein, total fat, saturated fat, cholesterol, complex carbohydrates, fiber, sodium and calcium.

Also, we support the S. 1425 provision that the Secretary of Health and Human Services can have the flexibility to add to or subtract from the content of nutrition information on labels depending on newer scientific information.

ADA supports expression of serving sizes in common household measures and in standardized portions for easier comparisons. Our written testimony gives illustrations regarding the need for uniform standards for serving sizes.

The label should give nutrition information for the food as consumed, not necessarily just as packaged. Single-serving containers should also carry information regarding a standard portion size to make comparisons easier.

We do not believe that the percent of calories from fat is necessary and useful information because it would require the consumer to make sequential computations over the day. As consumers aim for an average fat intake of less than 30 percent of their calories from fat, they could easily misinterpret any food with greater than 30 percent fat calories as being not good or not healthy.

Health messages must relate food to the total diet over time. Health claims should be based upon the prioritized recommendations as stated in the diet and health report because today people are distorting their diets in very, very strange ways as they are encouraged to become preoccupied with specific and single-disease entities. S. 1425 appropriately addresses our concerns on this matter.

We certainly need definitions for those descriptors on the labels. We need to define "high", "reduced", "low", "light", "lean", "natural" and "organic".

The movement in the sodium and calorie and cholesterol descriptors is fairly good, and we need definitions for descriptors for all the nutrients in your bill.

Nutrient content claims should not ignore negative aspects of a food. The "no cholesterol" claim should not be allowed unless the food is low in fat and saturated fat.

Unfortunately, S. 1425 does not link health and nutrition claims with positive and negative attributes of foods. We suggest that the word "each" be substituted for "any" so that nutrients for which there is no significant scientific disagreement about their common or group relationship to a diet and disease can be linked together. An example would be grouping total fat, saturated fat, cholesterol and sodium because of their relationship to heart disease.

Many of today's 300 standards of identities are passe. Standards of identities should be completely revamped. Flexibility would encourage manufacturers to reformulate and perhaps develop new, hopefully healthier, food products.

ADA strongly supports the consumer education provision in S. 1425. We definitely need to speak as one voice in an integrated manner to encourage consumers to use the information that we are going to provide in a better fashion on food labels.

In closing, again I urge that we all work together. I do believe for our association that congressional action is necessary for food labeling reform. S. 1425 provides a very strong framework, and we hope legislation will be enacted into law this year. Thank you.

Senator METZENBAUM. Thank you very much, Dr. Wellman. We very much appreciate the support of the American Dietetic Association and your testimony. We appreciate the excellent suggestions that you have made as to how we might improve the bill, and certainly will take a look at those subjects.

[The prepared statement of Dr. Wellman follows:]

PREPARED STATEMENT OF NANCY S. WELLMAN

Introduction

Good morning, Chairman Kennedy and members of the Committee on Labor and Human Resources.

I am Nancy Wellman, PhD, RD, President of The American Dietetic Association (ADA). The American Dietetic Association promotes optimal health and nutritional status of the population through quality dietetic practice, education, and research. On behalf of the more than 58,000 ADA members nationwide, thank you for the opportunity to address you today in support of the *Nutrition Labeling and Education Act of 1989*, S 1425.

Members of The American Dietetic Association have unique professional skills to help the public translate the science of nutrition into the art of healthy food choices. Dietitians know that good diets promote health and prevent disease. A sound nutrition labeling system will help Americans make healthier food choices if it addresses current public health problems.

Consumer interest in nutrition has risen dramatically. Yet, transforming nutrition information into appropriate actions is difficult even for intelligent and well-motivated individuals. Current labeling information, health claims, and advertising messages about food are confusing and misleading the public.

ADA believes that it is important for the public to make informed food choices based on consistent and accurate nutrition information on food labels. ADA supports the need to improve current labeling information and is committed to participate in this important effort through support of S 1425.

Consumer concerns

A variety of federal and private surveys show that consumers use food labeling information extensively. While most consumers read food labels, a much lower level of use was found when consumers were asked to recall what label informatain they used.

Several surveys show that more consumers are using labeling information to avoid excessive calories, salt/sodium, fats/oils, cholesterol, and preservatives. This shift from US Recommended Daily Allowance (US RDA) information (prevention of nutrient deficiencies) to current public health concerns results from a better understanding of the link between diet and health. Chronic diseases and conditions with diet-related factors that encourage label use include: cancer, dental caries, diabetes, heart disease, hypertension, kidney disease, obesity, and osteoporosis.

Nutrition labeling legislation and regulation .

ADA, along with the food industry, and many professional and consumer organizations concerned with promoting the health and nutritional status of the population, concur with Congress in recognizing the need to revise current labeling regulations. ADA supports mandatory, uniform labeling of all packaged and processed food products. An estimated 45 to 60 percent of packaged and processed foods currently carry voluntary nutrition information on their labels. While some segments of the food industry oppose mandatory food labeling, industry's overriding concern is the proliferation of individual state laws, which may conflict with one another and/or with federal statutes.

Although S 1425 addresses only Food and Drug Administration (FDA) regulated foods, ADA supports the need for one uniform set of food labeling regulations by both FDA and the US Department of Agriculture (USDA). Stronger Federal Trade Commission (FTC) regulations on the advertising of nutrition and health aspects of food products are also needed.

In the regulatory arena, FDA, USDA, and FTC undertook a reevaluation in 1978 of their respective labeling practices by holding regional public hearings and sponsoring a Consumer Food Survey. ADA has commented on the need to revise the content and format of nutrition labeling in the past (1). Since then, changes to labeling regulations have been proceeding in a piecemeal fashion. It is time to completely overhaul the current system.

Label content and format

Ingredient information and nutrient content on food labels are two ways of providing nutrition information to the public. The American Dietetic Association sees the need to provide nutrition information within the context of a broader health education policy. ADA believes that nutrition information on food labels, as addressed in S 1425, and in food advertising, governed by the FTC, can improve the food literacy of Americans (2).

We recognize there is a limit to the amount of useful information that can be placed on the package label. Some micronutrient information required by current nutrition labeling regulations is extraneous and could be replaced with more useful information.

ADA agrees with statements in the National Academy of Sciences report, *Diet and Health: Implications for Reducing Chronic Disease Risk*, and the *Surgeon General's Report on Nutrition and Health* that nutritional components of concern for most Americans are total calories, protein, total fat, saturated fat, cholesterol, complex carbohydrates, fiber, sodium, and calcium (3, 4). ADA also supports the requirements in S 1425 that provide the Secretary of Health and Human Services the flexibility to add to or subtract from the content of nutrition information labeling based on current science through regulation revision.

ADA supports provisions in S 1425 that require FDA to express serving sizes in common household measures appropriate to the food and to food consumption patterns of Americans (such as 1/2 cup or 2 Tablespoons) or in counts (such as 2 pineapple rings). The serving size should be a standardized portion for similar foods for easier comparisons.

For example, we currently see jelly and jam produced by the same manufacturer that list 1 teaspoon or 2 teaspoons as the serving size. Consumers may think one has twice the calories, when an equal portion is about the same.

Single serving containers for foods such as yogurt, boxed juices or cereal, and frozen foods should provide calories and nutrients per container. It is not reasonable to assume 1.4 servings from a single-serve container of juice with one straw. Such packages could carry additional labeling on the standard portion size for comparison purposes. This would be particularly useful for products such as yogurt that come in 3, 4, 6, and 8 ounce single serving containers.

Another example is tuna fish packed in oil or water. Both carry labels stating that a 6.5 ounce can equals 3.3 servings (2 ounces per serving). We question if a typical serving is only 2 ounces and wonder who gets the 0.3 serving. Also, the stated serving size for tuna includes the liquid--oil or water. Most people drain the oil or water from their tuna, many also rinse it, thus reducing the fat and/or sodium levels. A reliable, non-misleading nutrition labeling system should reflect nutrition information as consumed, not necessarily just as packaged.

When a packaged food requires preparation, including the addition of other ingredients, the product should provide nutritional information based on the edible portion. For example, boxed macaroni and cheese should be labeled to include the milk and margarine required by the directions to prepare the finished product. In other words, the nutrient levels at the time of food consumption (as the food is typically served) should be listed. If consumers are concerned about particular nutrients being too high, they can then substitute or omit ingredients to meet their particular needs.

There has been much discussion over the expression of percentage of calories from fat. We believe that percent of calories from fat, or from other food components, does not provide the public with useful information to determine overall fat contribution to one's daily diet. Labeling foods with the percentage of calories from fats is difficult for consumers to integrate into a total day's diet. It would require sequential computations over the day. The percentages often lead to erroneous conclusions about the nutritional value of a particular food.

Expressing labeling information as total fat calories, saturated fat calories, and unsaturated fat calories per serving, as well as grams of fat, saturated fat, and unsaturated fat, will better help the public implement current recommendations into their daily diet.

Health and Nutrient Content Claims

Health and nutrient content claims are two very important issues related to food labeling. ADA believes that health and nutrient claims on food labels may provide the consumer with useful information if claims are substantiated and related to current public health problems. Less than responsible health claims on labels and in advertising hype is leading to an inevitable consumer backlash and distrust of credible scientific research about diet and health.

Therefore, health related messages must convey a food's relationship to a total diet over time, and reflect prudent dietary recommendations embodied in the National Academy of Sciences report *Diet and Health: Implications for Reducing Chronic Disease Risk*, and the *Surgeon General's Report on Nutrition and Health* (3, 4, 5). Health claims labeling should assist the public to integrate specific food products into a well-balanced diet, and avoid distortion of dietary habits and preoccupation with specific diseases. The public must be provided with truthful, non-misleading information that is based upon a preponderance of scientific evidence. Although ADA agrees, in principle, with the FDA draft final rule proposed in August 1988, the original proposal did not provide consumers with these aforementioned assurances and believes that the provisions of S 1425 will more appropriately address these concerns (6).

For nutrient content claims on food products, ADA urges the FDA to establish regulations to define such terms as "high-," "reduced-," "low-," "no-," "lite," "light," "lean," "natural," "organic," and others as needed. As FDA has established definitions through regulation to describe sodium and caloric content of foods, and has proposed regulations for cholesterol, definitions are needed for, at a minimum, the nutrients required by S 1425 to be included on the nutrition information label. Other nutrients of significant public health concern in addition to those required should have nutrient content definitions developed through regulations as needed.

Nutrient content claims must also take into account the positive and negative aspects of foods in order to not mislead and/or focus consumers on singular food characteristics. As an example, for a food to be able to make a "no-cholesterol" claim, the food should also be required by regulation to be low in total fat and saturated fat. Another example is, if a food does not naturally contain cholesterol (e.g., fruits & vegetables, vegetable oils, peanut butter), or any other nutrient as an inherent component, those foods should not be allowed to have content claims regarding those nutrients on their labels. It is important that consumers understand that all foods consumed in the total daily diet affect their health.

As written, S 1425 does not link health and nutrient claims with positive and negative health attributes of foods. We request that the word "each" be substituted for "any," so that nutrients, for which there is no significant scientific disagreement about their grouped relationship to diet and disease, can be linked toghether. An example would be grouping total fat, saturated fat, cholesterol, and sodium because of their relationship to heart disease.

Ingredient labeling

ADA believes disclosure of ingredients is important. Expression of ingredients as a percentage of product is not needed if there is full disclosure of important nutrients on the nutrition information label.

Currently, ingredients are listed in descending order of predominance by weight. FDA should continue this requirement and also consider listing ingredients in a fashion appropriate to the edible product. As an example, it may be more appropriate for dry flavored gelatin mix to list ingredients in descending order of predominance by volume rather than weight since the final product is primarily water. Other examples would be concentrated juices, salad dressings, and other liquid mixtures.

"And/or" labeling of fats and oils has recently received much attention by FDA and Congress. ADA believes that full disclosure of fat content and composition (total fat, saturated fat, unsaturated fat) in the nutrition information label will provide consumers with the information necessary to make wiser choices related to fat intake in their daily diet. With strong nutrition information labeling regulations, "and/or" labeling could continue, as mixtures of fats and oils allow food manufacturers the flexibility to respond to fluctuations in price and availability.

Current ingredient labeling regulations allows grouping of specific names of several categories of ingredients in lieu of complete ingredient labeling, such as "spices," "natural or artificial flavors," and "natural or artificial colors." This practice could be continued as long as specific ingredients do not pose a major public health problem to a significant segment of the American public.

ADA encourages FDA to continue to require labeling of ingredients that are strong allergens to a significant population segment, as with sulfite labeling regulations. We do not support further categorical groupings of ingredients.

Food standards

Over the years, some 300 food standards have been adopted. These standards of identity were developed to protect consumers against adulteration or unnecessary fortification of foods. ADA recommends that current standards of identity related to food labeling requirements and their composition be completely revamped.

The American public, increasingly concerned about the relation of diet to health, is demanding healthier food products. Food standards should be flexible enough to allow for product variability within the standard to promote optimal health. This flexibility is qualified by the need to maintain the philosophy of consumer protection against adulteration or unnecessary fortification.

Consumer education on food labels

ADA strongly supports the consumer education provision in S 1425. There is a great need to educate consumers about the availability and use of nutrition information on food labels and the importance of maintaining a nutritious diet to promote personal health.

We support this provision and encourage professional and consumer organizations, the food industry, and government to speak with one voice to improve consumer use and understanding of food labeling information.

Closing

Based on current reports and fragmented federal efforts over the last several years, The American Dietetic Association, along with government, food industry, professional and consumer organizations and the public must work together to improve regulations for nutrition information and health and nutrient content claims on food labels. ADA is prepared to work toward comprehensive, coordinated labeling reform and to offer the expertise of our members to government bodies and other organizations to develop nutrition labeling regulations that will promote informed food choices by the American public. This includes future discussions of USDA labeling policies and FTC regulations for food advertising.

While the FDA is currently reviewing nutrition labeling, health and nutrient content claims, and label format, ADA believes that Congressional action is necessary to achieve food labeling reform in a timely manner. S.1425 provides the strong framework to convey nutrition information on food labels. It is our hope that the legislation will be enacted into law this year.

I thank the Committee on Labor and Human Resources for the opportunity to express the views of The American Dietetic Association on the *Nutrition Labeling and Education Act of 1989*.

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Senator **Metzenbaum**. With respect to the broad-based issues of including meat and poultry as well, as in the legislation, there is no secret about the fact that that comes within the jurisdiction of the Agriculture committee. We are working with them and are hopeful that they will see fit to proceed in that area. With respect to the FTC getting jurisdiction, I can only say to you we're going to have one hell of a time getting it through this committee—let alone through the Congress—without grabbing on the jurisdiction of the FTC and the Agriculture Department. However, we appreciate what you are saying, and we think it would make a lot of sense.

Now, I suppose for most Americans, the term "light" on a package means fewer calories. But I have here a jar of Coffeemate Light that says it is light because it has 50 percent less fat. However, on the label of regular Coffeemate, it lists the exact same fat content. Now, here is no cholesterol, extra light olive oil, yet I don't know what is extra light about it. I mean, compared to what?

Here is light and dark corn syrup, both with the same number of calories. The question is, what does "light" mean on a food label or anything else, for that matter?

I might say that, on behalf of Senator Hatch and myself, I think we should be commended for contributing to the economy of the country by going out and buying all these products in order to have them available today. We are happy to have all of these products available to us.

What does "light" mean on a food label? Dr. Wellman, you might want to respond to that.

Dr. **Wellman**. Well, it can mean many things. It can mean light in color, it can mean lower in calories, it can mean a smaller portion size, or it can even mean lower in sodium. A number of cheeses are called "light" cheese, and the only difference is that their sodium content is a bit lower, sometimes naturally so in the example of Swiss cheese.

Senator **Metzenbaum**. Clearly, a product should not be allowed to splash a "no cholesterol" claim on the front panel when it buries the saturated fat content on the back of the box. But where do we draw the line on health messages or health claims, and are they all bad, or are some helpful?

Ms. Haas, perhaps you'd like to answer that.

Ms. **Haas**. I would. I'd like to say one thing about the previous statement. As long as we don't have any standard for "light", and as long as the manufacturer can put it on at will, then it doesn't mean very much to consumers at all. I think that is what this legislation is all about. It's about setting standards so that the words that are used by manufacturers, whether they be health claims or characteristics like "light", mean something to consumers, and that they relate to health.

I think it has been our position at Public Voice and in this coalition as well, that in the proper way and regulated with the proper standards, that health claims and disease prevention messages are appropriate in today's marketplace.

The important thing is that we set those standards, so that we do not have misleading claims. At the same time, our intent is not to strangle the food industry. I think that the amended version of S. 1425 provides the kind of balance that is needed. We will then have situations where claims are used that would not increase dietary risk, while at the same time we are promoting a nutritional value in the product. I think if we look at this as a balancing act, then I think we can derive the kind of legislation that we need.

Senator **METZENBAUM**. Thank you.

Now, critics of this bill argue that we shouldn't prescribe the elements that appear on the label—fat, salt, cholesterol, carbohydrates, etc. I believe we have provided flexibility in the bill while specifically labeling the elements which are recognized as nutritionally significant.

For those of you with scientific background, do you feel that labeling these key elements—again, fat, salt, cholesterol, fiber, etc.—puts us on nutritionally solid ground?

Dr. **WELLMAN**. If I can respond to that, I would say definitely yes. I think there is substantial scientific evidence, and we have the foundation upon which to develop the regulation.

Senator **METZENBAUM**. Thank you.

Ms. **CHAPMAN**. I'd like to comment from the American Heart Association's viewpoint, too. I think we absolutely concur with that. Since those have been the major nutrients for which we have given dietary advice for almost 20 years, we believe it is really a very important step forward to include those nutrients on the label.

Senator **METZENBAUM**. Thank you.

Now, the question of cooking oils is a particularly difficult one. These are all fat products, yet some are clearly better for you than others. Should an oil be allowed to make a "low saturated" claim to distinguish itself from heavily-saturated cooking oil?

Ms. **CHAPMAN**. Let me just respond to that. In the American Heart Association's educational material, we identify all liquid oils as okay oils. As they become slightly hydrogenated, they become a little bit more saturated. However, even in their most saturated form, the hydrogenated fat only becomes about 25 percent saturated, that is, compared to something like other tropical oils that are 50 percent saturated or more. When you talk about oils, I think you have to distinguish what is typically acceptable. This would include corn, soybean, safflower, sunflower, canola oil, olive oil and peanut oil.

Senator **METZENBAUM**. As some of you know, one of the major companies in this country has had pending with the FDA for about 2 years a proposal to approve the sale of an oil that is to be low on fat, low on saturated oils, and allegedly causes no dietary problems.

Are any of you familiar with the product—I think it is being tested by P&G—and would you care to make any comment in connection with it?

Dr. **WELLMAN**. I am fairly familiar with the product. You are talking about Olestra, and it is a nondigestable fat in that it is not dissimilar to what happens with mineral oil. This means it is a complex molecule; it goes right through you. Olestra doesn't allow the enzymes in your G.I. tract to grab onto it and to break it down. Unless it is broken down, it can't be absorbed, so it passes right through.

It is my understanding that it is still under review at the FDA and that they have substantial scientific studies behind it that they are sharing quite openly with the scientific community.

There is another product also that works as a fat but is really a protein source. It is made from egg whites and the protein in milk, and that is digestible, but it is lower in calories because it is made from protein rather than fat. I think that one is still under review also. That is a natural food product from my understanding.

Senator **METZENBAUM**. Thank you.

Mr. **SILVERGLADE**. Senator, I have to add that we have expressed our concerns to FDA about Olestra. We have looked at the tests. We have some serious questions about them, and we have sent FDA our opinion on that.

Senator **METZENBAUM**. And in general, what are your concerns, Mr. Silverglade?

Mr. **SILVERGLADE**. I wish I had our scientific food safety staff sitting next to me, but since this was a hearing on food labeling, they are not here. We could certainly submit that for the record.

Senator **HATCH**. Would you yield for a second, Howard? Aren't they treating those as food additives, so they have to go through the whole food additive process.

Dr. **WELLMAN**. Yes.

Senator **METZENBAUM**. Back to the oat bran potato chips, these delectable products——

Senator **HATCH**. I want to try one of those before the day is over.

Senator **METZENBAUM**. Be my guest.

Senator **HATCH**. He is doing that too quickly; I'm not sure I want to eat them.

Senator **METZENBAUM**. The ingredients are potatoes, peanut oil, oat bran and salt. We all know about the studies regarding oat bran and cholesterol levels. My question is, should a company be allowed to market potato chips by sprinkling a little oat bran on them, with the implication that they are "heart healthy"?

Ms. **JOCHUM**. Well, I would say it is a misnomer, because potato chips don't contain oats. Of course, we know why they have incorporated them—to play upon the scientific evidence that if you eat so much oat bran, you lower your cholesterol level. The question is, how much oat bran would you have to eat to lower your cholesterol level significantly? Now I have forgotten the question, Senator.

Senator **METZENBAUM**. My question is, should the company be allowed to market potato chips by sprinkling a little oat bran on them in order to suggest that they are "heart healthy"?

Ms. **JOCHUM**. No. I think it is misconstruing the evidence, and it is strictly to prey upon the public. No, they shouldn't.

Dr. **WELLMAN**. It is interesting to me that I recently saw a billboard advertising oat bran pizza. So we are into billboard-size advertising.

Senator **METZENBAUM**. One argument on the legislation is that consumers aren't ready for this kind of information, that education should come first. Would any of you care to comment on that?

Ms. **HAAS**. No. I think having a consumer education program first would be like putting the cart before the horse. First you need the tools in the marketplace, which is where you purchase the products. It is critically important as you are purchasing the product to have that information there to help guide you to a healthy diet. Afterwards it is appropriate to have the education program to learn how to use the label.

I think that they both really go together as well. We shouldn't have one without the other. But nutrition labeling must come first.

Mr. **Silverglade**. The surveys are quite clear on this, that consumers, the majority of Americans, are aware of the steps they should be taking to modify their diet in order to reduce their risk of diet-related disease, and they are trying to look at food levels. Surveys already show that, so we are ready for a better food label now.

Senator **Metzenbaum**. Thank you.

Senator Hatch.

Senator **Hatch**. Thank you.

Let me ask all of you a few questions. In a recent study conducted by the Federal Trade Commission entitled, "Health Claims in Advertising and Labeling: A Study of the Cereal Market", it was found that the health claims for cereals have had a marked positive effect on the eating habits of Americans, particularly nonwhites, smokers, and women living in female-headed households.

Considering these claims were made in a virtually nonregulated environment, do you believe it to be in the Nation's best interest to prohibit or severely restrict health claims, or should they be permitted and in fact encouraged subject to the requirement that they be truthful and nonmisleading?

Ms. Chapman.

Ms. **Chapman**. Senator Hatch, if you look into that study, it is my understanding that those cereals that claim to be high in dietary fiber in fact were, and that that label was not used on any cereals that were not high in fiber. So in that case, I think the industry had taken a license. They had looked at the research that we have just heard from the gentleman from the Cancer Society about the need to increase dietary fiber and put forward some information. It is not my understanding that those products had any detrimental component as a part of those particular products.

I think that illustrates that there is a tremendous benefit of giving consumers information in a variety of settings. The American Heart Association has done a great deal in terms of public education. But in terms of when it gets down to the supermarket choice on the shelf—with that information that they can comparatively shop between products—it is difficult for them to know what that actual brand has in it. I think there are very appropriate uses, but again I think it needs to not confuse the consumer or to cover over other components in a product that are deleterious.

Senator **Hatch**. Ms. Jochum.

Ms. **Jochum**. I don't have information on that study.

Senator **Hatch**. OK. Ellen.

Ms. **Haas**. The question you ask, Senator Hatch, is a good one, but let me say I believe there is no one at this table that would prohibit the use of health claims and nutrition messages. I think as we said earlier, there is an appropriate role for them—nor would I think that anyone would severely restrict them, as you said, so that we don't get that nutrition information in the marketplace.

The question is how do you define what is misleading. In the cases where there are both positive and negative attributes of a food product, it is very important if you are going to be putting forth the positive attributes, which might be no cholesterol or high fiber, that we also have protections so that the consumer understands some of the negative attributes that are in the product, like high saturated fat.

I think our challenge is how you define what is misleading and what kind of restrictions you put in there.

Mr. **Silverglade**. Senator, I think the FTC should be given Ad Week's Pinocchio Award for those two studies. There are actually two studies. The first one looked only at Kellogg's All-Bran Cereal as an example of a health claim. That's the report that you discussed, which said that the company has been so successful in educating the public.

It is interesting about that label—that label was precleared by the National Cancer Institute, and the food had no nutritional drawbacks. And those are two criteria that the food industry has constantly opposed while this legislation has been discussed. They say they will not support any bill that requires preclearance of health claims, and they don't like health claims prohibited if the food has nutritional drawbacks. Yet, the example studied by the FTC met those two criteria.

With that information in hand, the FTC then issued a second report on the same day which called for a general policy very different from one that would require preclearance or prohibit health claims on foods that had nutritional drawbacks.

In fact, the FTC policy is basically the same as the policy the FDA has had in effect since 1987. The policy that was imposed upon FDA by OMB. We have seen the results of that policy—yes, there are some useful claims for cereals that we support, but there are many, many, many other misleading and deceptive claims and some that are downright false.

Senator **Hatch**. OK.

Dr. **Wellman**. I'd like to add that I do believe we need much stronger regulations for nutrient content claims and health claims, if only for the simple reason that those things are usually on the front of the package, and the nutrition information labeling information is on the back of the package.

What is displayed in the supermarkets, of course, is the front of the package, and we are not sure whether consumers actually turn the packages around and read the more controlled, regulated information.

Senator **Hatch**. OK. If health claims are to be permitted, could you recommend a test for the degree of substantiation needed to support a health claim which would balance the consumer's desire and need for diet and health information with the equally important public policy of ensuring labeling and advertising as truthful and not misleading.

Ms. Chapman.

Ms. **Chapman**. I think the issuance of two major reports this past year by the Surgeon General and the National Academy of Sciences National Research Council illustrate the consensus that is building on particular areas, and I think they have also identified the major public health concerns. I think it is that type of body that comes together to look at the science that would indicate the importance of coming with a more consensus approach in the science as a measure of whether it is a sound health claim.

Senator **Hatch**. OK. Thank you.

Ms. **Jochum**. I concur that this would be a consensus of the major medical leaders in the Nation, scientific evidence consensus to permit such labeling.

Senator **Hatch**. OK. Ms. Haas.

Ms. **Haas**. We have to realize that we are never going to have unanimity in an evolving science. I think there are always going to be some people off to the left or off to the right who are going to disagree somewhat. However, if we are going to have claims in the marketplace that are not misleading, then we've got to base it on the best of scientific evidence.

As I said in my prepared remarks, we believe that scientific consensus is the appropriate standard. However, there are all kinds of ways that you can define that. The amended version of S. 1425 states that there is no significant scientific disagreement. I think this allows us to have the kind of foundation of scientific evidence that allows us some of the flexibility that you spoke of earlier, Senator Hatch. That is necessary, and I think that that is the kind of standard that would be appropriate.

Senator **Hatch**. OK. Mr. Silverglade.

Mr. **Silverglade**. We would support the standard in S. 1425; we have no significant scientific disagreement.

Fortunately, on the major problems related to diet and health, there is significant scientific agreement of the changes that we should make. We know about saturated fat, cholesterol and sodium and heart disease. There is little scientific disagreement about the relationship between fiber and diet-related disease.

Really, one article in *Atlantic Monthly* doesn't mean there is significant scientific disagreement. Where there is significant scientific disagreement involves nutrients and diet-related diseases that really are not major problems, vitamin therapy, for example, things of that sort. So I think the standard in S. 1425 is certainly the best standard.

Senator **Hatch**. Thank you. Dr. Wellman.

Dr. **Wellman**. I think we have significant scientific foundation for regulating health claims. The diet and health report from a dietician's point of view is the best thing that we have seen come along in a long time. It pulls together all the scientific studies to date, and it ranks them in priority and makes recommendations in terms of what foods one would be more likely to eat to be healthier. So I think we've got the information there.

The diet and health report is in concert with the Surgeon General's report.

Senator **Hatch**. That's great.

Well, Ms. Haas, you and I have worked together very closely to create the President's Commission on Disease Prevention and Health Promotion because I think we share the common goal of working to prevent diseases happening to the American people.

Ms. **Haas**. We have appreciated your leadership tremendously, Senator Hatch, in that effort, and it is wonderful to see the work that they have been doing.

Senator **Hatch**. Yes, I think so, too. I hope we can work together to work out some of these issues on food labeling as well because they really are important. Both Senator Metzenbaum and I, as well as other leaders in Congress, really are concerned in this area and want to do the very best job we can by developing a bill that will work.

Now, let me just ask you, Mr. Silverglade, a couple of questions. On numerous occasions, CSPI has decried the lack of consistent definitions for terms such as "natural", "light", "low in", "reduced", etc. Assuming that you support the development of single Federal standards for these terms, do you also support the proposition that all labeling requirements including nutrition claims, health claims, product names, ingredient declarations, and health warning claims should be nationally developed and uniform; and if not, how do you distinguish between nutrition claims and other labeling claims such as "warning"?

Mr. **Silverglade**. Well, I think there is a very easy way—the way the Food, Drug and Cosmetic Act has always distinguished between food safety and food labeling. No, I don't believe that this bill, which only covers nutrition issues—getting the fat and cholesterol out of our diet—should preempt State laws such as California's Proposition 65, which is trying to get the lead out of canned foods. There is a big difference between fat and cholesterol and lead cans.

You know, this is actually a good point. About 25 percent of all canned foods in the country come in lead soldered cans. When the cans are opened and stored in the refrigerator, studies show that lead seeps into the food and is a cause of blood poisoning among young children.

In California, there are reports that lead soldered cans are no longer being used because of California's Proposition 65. If they were used in California, the manufacturer would be required to put a health warning label on the cans about the reproductive hazards of lead if consumed in food.

I think—and I will let other environmental groups who are behind Proposition 65 defend that law in a different forum involving food safety—but I think the point is clear that addressing problems such as lead contamination is not the same at all as dealing with the fat and cholesterol and sodium in our diets. Certainly, a bill that addresses the latter should not preempt States in areas of food safety.

Senator **Hatch**. Well, I have a lot of other questions, but I will submit them to you in the interest of moving ahead here. But it seems to me—I hate to characterize your comments—but it seems to me that all citizens should have the benefit of knowing whether there is lead in a can, and I think that is part of having uniform nutritional labeling. But, if you are going to have 50 different approaches to it, then that means some citizens in some States have better information than citizens in others. It may mean that some citizens in some States pay considerably more money for what are really negligible health benefits.

So again it comes down to being reasonable, practical and making the best decisions you can under the circumstances. It seems to me without uniform mandatory labeling and Federal preemption we are going to have all kinds of difficulties like that.

If it is that important, then it ought to be part of the labeling process.

Mr. **Silverglade**. Well, Senator, I have to disagree with you. It should be national—the FDA can't get rid of lead cans because under the Food, Drug and Cosmetic Act, lead soldered cans are prior-sanctioned, meaning they are grandfathered——

Senator **Hatch**. Then we have to change that.

Mr. **Silverglade**. Well, we need to change the food safety laws.

Senator **Hatch**. Well, let's change it preemptively so that everybody in the country benefits, not just those in California.

Mr. **Silverglade**. That has to be done in the context of a hearing on food safety laws, because that's why there is lead in cans, not because of labeling.

Ms. **Haas**. Senator Hatch, if I may just add one point, as this committee has discussed in the pesticide issue—and has addressed it—we do not have the strong standards that are needed. The President has recognized that in his proposal, and the committee is addressing certain legislative proposals.

In the absence of strong standards in the food safety area, disclosure becomes paramount. It is most important. Therefore we can't take away that protection and that right of consumers to have the information.

With nutrition labeling, as your bill and Senator Metzenbaum's bills both will provide, we would have the strongest of standards and therefore, preemption for nutrition labeling or claims would be very appropriate.

Senator **Hatch**. Yes. I would support it if the standards are strong enough.

Ms. **Haas**. But we don't have that in the food safety area, and I don't think there is anyone who would say that we would. Therefore, we have to separate the tracks of food safety and pesticide regulation from nutrition regulation. We cannot tarnish our progress in nutrition labeling. If we allow this debate to just revolve around preemption, we'll have another 20 years, and we'll have the next White House Conference on Nutrition say we still don't have mandatory nutrition labeling.

Senator **Hatch**. Well, my point has always been we should put them both together so that you can have mandatory preemption. And we are capable of doing that.

Mr. **Silverglade**. Well, Senator, Ellen and I have been working on food safety laws now since 1981, and——

Senator **Hatch**. Yes, and I remember back in 1981, when I first started to bring up the negligible risk standard, the decrying I took from all over America by people just like you, and today, that's where we are. Now, we would have been 8 years ahead if we had just followed what we were doing back then.

Mr. **Silverglade**. Well, we have a consensus on food labeling; the industries, the FDA, consumer and health organizations all agree—so why don't we move ahead on things that we have a consensus on, which is nutrition labeling?

Senator **Hatch**. In other words, don't do what is right for the rest of the public because some organizations may or may not agree, or may think it should be more stringent. Look, I think these are important areas, and I think we ought to move ahead in the best interests of the public and not haggle over them. But be that as it may, that's part of what makes this country great are the differences of opinion. But——

Ms. Haas. We do have an opportunity to move ahead with Senator Kennedy's legislation on pesticides. So there is an opportunity to deal with these food safety questions on another track.

Senator Hatch. Only part of the food safety questions, when we could deal with all of them. You see, that's what I have trouble with. What bothers me is that we recommended years ago that we move to a negligible risk standard and get rid of this idiotic fealty to the Delaney clause that allows some foods to be on the market that shouldn't be there and prohibits others that should be there from being there. Anyone who has looked at this area lately knows it is not scientific; it is the least scientific approach we can have. And yet we are still having these difficulties.

I guess that is a debate for another day. But I have appreciated the testimony we have had, and it has been very interesting to me.

Senator Metzenbaum. Thank you very much. We appreciate the cooperation of this panel and your support for my legislation. We look forward to continuing to work with you.

Senator Metzenbaum. Our last panel includes Mr. E. Linwood Tipton, president of the Milk Industry Foundation and the International Ice Cream Association; John R. Cady, president of the National Food Processors Association; Sherwin Gardner, vice president for Science and Technology, Grocery Manufacturers of America, and George Burditt, of Burditt, Bowles and Radzius.

I think you all know our 5-minute rule. We are happy to have you with us.

Senator Hatch. And I want to welcome all of you here, too. I have to run, but I do want to welcome you all and thank you for coming.

Senator Metzenbaum. I want to say that the chair feels that there has been some progress made as far as the food industry is concerned with respect to this subject. The only trouble is I feel that being "a little bit pregnant" doesn't solve the problem. I would hope we could find some means of working out the differences that continue to exist. We stand prepared to work with you and to meet with you as much as is necessary in order to bring about a consensus.

We'll start off with Mr. Tipton, president of the Milk Industry Foundation and the International Ice Cream Association.

STATEMENTS OF E. LINWOOD TIPTON, PRESIDENT, MILK INDUSTRY FOUNDATION AND INTERNATIONAL ICE CREAM ASSOCIATION; JOHN R. CADY, PRESIDENT, NATIONAL FOOD PROCESSORS ASSOCIATION; SHERWIN GARDNER, VICE PRESIDENT FOR SCIENCE AND TECHNOLOGY, GROCERY MANUFACTURERS OF AMERICA, AND GEORGE BURDITT, ATTORNEY, BURDITT, BOWLES AND RADZIUS

Mr. Tipton. Mr. Chairman, on behalf of the dairy industry, we want to thank you for this opportunity to testify.

Dairy foods are unique. They are one of the four basic food groups. They are rich in nutrients, including vitamins and minerals, and we have a long history of providing nutrition information.

We helped pioneer nutrition labeling in the early 1970's, during the period of nutrition deficiencies. We are prepared to lead again, but we want equal treatment with respect to all foods.

Eighty percent of dairy foods on the supermarket shelves are currently nutritionally labeled. While nutrition labeling legislation under consideration starts to define the labeling in foods, it stops far short of providing an adequate basis for comparison. The bill sets as its standard to provide information in the context of total daily diet, but covers only about 35 percent of the U.S. consumer's food dollar.

Only with labeling of all foods eaten on all occasions, can consumers make informed choices about food selections in their diets. For instance, skinless chicken is usually regarded as low in fat. However, 6 chicken nuggets at a fast food restaurant contain the equivalent amount of fat as 1½ pints of regular ice cream. We believe everyone has the right to know the nutrients of all foods at all times.

Nutrition labeling must not provide a basis for unfair discrimination among foods and possibly lead to unbalanced diets. It should facilitate the consumer's ability to choose a healthy, well-balanced diet from the full variety of foods available and at all occasions. The only way to provide that information on which informed choices and decisions can be made is to nutritionally label all foods. Foods without many nutrients should be labeled to divulge their deficiencies. We should avoid the potential for nonnutritious foods appearing to be nutritionally superior to those which make significant nutrition contributions simply because they are not labeled.

We applaud the goal of the members of Congress to provide more complete nutrition information to consumers.

Mr. Chairman, we are pleased to see the inclusion of vitamins and minerals in the list of nutrients required to be on the label in your bill. Many of these are very important. This is a significant improvement to the House version.

While most Americans receive adequate vitamins and minerals in their daily diet, those with the most urgent nutritional needs such as poor, elderly, or pregnant women, smokers, dieters and those suffering from infections or diseases, may not. It is important to label the positive nutrients of food, not just the ones to watch out for.

For many years the dairy industry has been a leader in providing consumers reduced calorie and reduced fat alternatives. Many products have long-established Federal standards of identity which are fully recognized by consumers—for example, lowfat yogurt, lowfat cottage cheese, lowfat milk and light cream. These products are subject to the standards of identity which describe the composition of the food. We are fearful that the proposed legislation might disrupt these long Federally-established names. Descriptive terms helpful to consumers and not misleading should be allowed to be continued in use.

Mr. Chairman, we urge you to carefully review the effect of your bill on existing standardized foods, common or usual names, and brand names. This is extremely important.

We believe the descriptor claims and health claims sections of the bill are overly burdensome, often will prevent the use of descriptors which are helpful to consumers in making their selections, and generally could be more harmful than helpful. Label statements which characterize the amount of the nutrient in the food can be helpful to consumers and should be allowed. If the nutrient characterized in the statement has nutritional significance as defined in the regulations, the statement uses terms which are defined in the regulations, the statement is accompanied by a reference to the complete nutrition label on the product—i.e., full disclosure of all nutrients—the statement is not descriptive or misleading in light of other nutritional properties of the food, we believe those are four criteria which would solve the problem on claims.

Full disclosure and prohibition against deceptive and misleading statements will allow consumers to properly evaluate claims or descriptions on the food labels. The standards in the bill—i.e., each of the nutrients required to be labeled in an amount which does not increase the risk of diet-related disease or health conditions of an individual in the general population—is too restrictive.

We believe the Food and Drug Administration should have the full authority to determine specifically how to label the format and should have total enforcement authority. We applaud the approach taken by Senator Hatch in laying the groundwork but leaving the details of the bill as written to the regulatory agencies.

National uniformity is important. The concept of national uniformity and enforcement requires equal labeling of all important nutrients on all foods consumed on all occasions in all places—the same rules no matter where you live or what you eat.

Likewise, States should be prohibited from promulgating laws or regulations which may mislead or confuse the information that is Federally required.

In summary, Mr. Chairman, we believe your bill falls short of providing full and uniform nutrition labeling and contains inappropriate claim provisions which could eliminate useful consumer information. Legislation introduced by Senator Hatch includes the necessary requirements for the Secretary of Health and Human Services to act and provides adequate authority for FDA to move forward and do its job.

Neither bill encompasses all foods eaten on all occasions, and we believe this is essential for the consumer to truly select balanced diets. Mr. Chairman, thank you for the opportunity to testify.

Senator METZENBAUM. Thank you, Mr. Tipton.

[The prepared statement of Mr. Tipton follows:]

PREPARED STATEMENT OF E. LINWOOD TIPTON

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear today on behalf of the Milk Industry Foundation and International Ice Cream Association to provide comments on proposed nutrition labeling legislation.

The Milk Industry Foundation (MIF) is the national trade association for processors of fluid milk and milk products, such as yogurt, cottage cheese, sour cream, soft cheeses, and dips. MIF's 220 member companies operate over 1000 plants nationwide and process nearly 80 percent of the fluid milk and related products consumed in the United States.

The International Ice Cream Association (IICA) is the trade association for manufacturers and distributors of ice cream and related frozen dessert products. Its 210 member companies operate about 800 plants nationwide and manufacture and distribute approximately 85 percent of the ice cream and related frozen desserts consumed in the United States.

Together, these two segments of the dairy processing industry utilize about two-thirds of the nation's milk supply to produce their products. The member companies of both associations are proud of the number and variety of nutritious products they provide and from which consumers can choose.

Dairy foods constitute one of the four basic food groups along with cereals, fruits and vegetables, and meats (including fish and poultry). They provide many important nutrients such as protein, calcium, phosphorous, magnesium, and many vitamins. Our industry has a long history of providing complete and accurate nutrition information to consumers and helped pioneer many of the nutrition education programs currently in use around the country.

In addition, the milk industry was the first in the food industry to endorse nutrition labeling. In the early 1970's, our Associations supported nutrition labeling. With the assistance of the Food and Drug Administration, we developed labeling information manuals that have allowed efficient and accurate presentation of nutrition information on fluid milk, milk products, ice cream, and related products.

Today, these manuals are used throughout the country not only by dairy foods processors, but also by state regulatory agencies and the FDA as reference documents for checking individual label compliance with existing nutrition labeling regulations. Collecting and preparing the nutritional data supplied in these manuals was accomplished at great expense to the Associations.

As a result of these activities and other voluntary labeling actions by milk and ice cream manufacturers, about 80% of all dairy foods found on supermarket shelves currently bear nutrition labeling. It is from our unique perspective within the food industry, and with our considerable experience in labeling the nutrient content of our products, that we respectfully suggest the following basic principles to guide any revisions to regulations governing the content of the nutrition label:

Nutrition labeling information should be mandatory only if it is extended to all foods.

We support providing complete, useful, and useable nutritional labeling information that will enable consumers to manage the total nutrient intake of their individual diets. However, in order for this to work, we believe mandatory nutrition labeling should be extended to all foods with no exceptions.

Since many food items are unaffected by Food and Drug Administration regulation, including meats and foods consumed away-from-home, mandatory nutrition labeling placed solely on FDA-regulated foods will not provide sufficient information for the total diet. Such a stance may, in fact, encourage consumption of less nutritious foods simply because they are not labeled to provide information about fat, calories, or sodium, thus permitting the consumer to indulge in "blissful ignorance."

If the nutrition information supplied to consumers is to be truly meaningful in terms of the total diet, complete information should be available to them for all the foods they consume, including away-from-home purchases such as "fast food."

Expanded nutrition labeling must not provide a basis for unfair discrimination among foods and possibly lead to unbalanced diets. Nutrition label information should facilitate the consumer's ability to choose a healthy, well-balanced diet from the full variety of foods available and at all occasions.

The nutrition label should bear complete nutrient information, including vitamins and minerals.

Good nutrition dictates eating a variety of foods that can be selected from the four basic groups, not selecting food groups that avoid certain components. Some have argued that it is no longer necessary that the nutrition label bear vitamin and mineral information. We strongly disagree with this assertion. Vitamins and minerals are important contributors to good nutrition and health, and therefore, should not be overlooked.

While most Americans are no longer deficient in vitamins and minerals, we should not overlook those with the most urgent nutritional needs, including the poor, the elderly, certain minorities, women of child-bearing age (especially pregnant and lactating women), those suffering from infections and diseases, dieters, and smokers.

Some specific examples of the important micronutrient information needs in this nation have been identified in the 1988 *Surgeon General's Report on Nutrition and Health*, the Public Health Service draft report, *Promoting Health/Preventing Disease: Year 2000 Objectives for the Nation*, and the National Academy of Sciences' *Recommended Dietary Allowances* (9th Ed.). They include:

The Elderly

As their metabolism fails and physical activity decreases, the elderly require less food to meet their daily energy requirements. As a result, extreme care must be taken to ensure that food intake provides essential nutrients. In addition, the elderly are more likely to suffer from chronic diseases and require certain medications that may necessitate dietary modification and increased intake of vitamins and minerals.

The Poor

A limited food budget can make the intake of essential vitamins and minerals extremely difficult without proper information. The lack of essential vitamins and minerals can lead to serious functional consequences, particularly among children.

Pregnant and Lactating Women

Pregnant women have high nutrient needs and a consequent need for information about vitamins and minerals in their diet. Among several factors, failure to maintain proper nutrition during pregnancy can result in such problems as premature delivery, low birth weight, and birth defects. Women who are breast-feeding their babies also have a critical need for proper intake of vitamins and minerals and therefore for information about the presence or absence of vitamins and minerals in their diet.

In addition, a large percentage of the public fails to consume the Recommended Daily Allowances of vitamins and minerals...

NUTRIENT	PERCENTAGE OF TOTAL POPULATION WITH INTAKE LESS THAN 100% U.S. RDA
Vitamin A	50%
Vitamin C	41%
Thiamin	45%
Riboflavin	34%
Calcium	68%
Iron	57%

Source: USDA Nationwide Food Consumption Survey

Placing undue emphasis on nutrients that some believe should be reduced or eliminated in the American diet and dropping requirements for labeling of important vitamins and minerals may well re-create problems associated with deficiencies of certain micronutrients. This can be avoided by requiring complete and understandable information about all nutrients.

Food nutrition labels that do not fully disclose complete information may facilitate claims regarding low levels of certain nutrients, and unfairly disadvantage foods whose macronutrient "profile" may not be viewed as favorably. In other words, if we require labels to contain only information about those components we should "watch out for," such as fat or sodium, we could create a dangerous imbalance in consumer perceptions regarding foods.

We are fearful that some foods could claim low levels of certain macronutrients, but not be required to inform consumers that the products are also very low in or devoid of many or all of the essential micronutrients.

For instance, without a balanced approach to nutrition labeling, a carton of 1% lowfat milk may not compare favorably with some other beverages that have no fat, saturated fat, or cholesterol, even though milk is far more nutritious than most beverage alternatives. We pose the question: "Is a beer or diet soft drink a more nutritious choice than a glass of 1% lowfat milk?"

Standards of Identity should be preserved, but the procedure for amending existing standards and proposing new standards should be improved.

The dairy industry has probably spent more time and resources on standards of identity than almost any other segment of the food business. From dry curd cottage cheese to sour half and half to heavy cream, almost every product our member companies manufacture is subject to a standard of identity.

It is true we have had our share of headaches with this system, but the overriding fact is that standards of identity have brought a level of consistent high quality to our industry, and we have earned the confidence of American consumers as a result. Unfortunately, we believe this message has been lost at senior levels of the Food and Drug Administration and, perhaps more importantly, at the Office of Management and Budget. We take this opportunity to encourage the federal government to dedicate sufficent resources to continue an active role in this area.

If we did not believe that this system works, we could have ignored the recent call from the frozen dessert industry, the states, and the public to develop standards of identity for frozen yogurt, frozen lowfat yogurt, and frozen nonfat yogurt. We did not ignore this need, however, and last June our proposals for standards for these products were submitted to FDA and from which they will hopefully emerge at some point in the near future.

We agree with those who say that the standards system can pose barriers to new product innovation and has failed to keep pace with advances in food technology. The rapid developments taking place in sweeteners and fat replacement technologies make the system's weaknesses even more acute.

We do believe, however, that it is not the concept of standards that is at fault, but rather the operation of the system. The sometimes painfully slow means of adoption and change within the food standards program can even be seen as in conflict with other policies and programs of the federal government. For example, many of the recent dietary recommendations coming forth from various public health officials have encouraged a reduction in the amount of calories from fat.

The dairy industry has responded by attempting to market reduced fat versions of traditional dairy products, such as ice cream, sour cream, and eggnog. In order to let consumers know that these products are completely acceptable substitutes for their higher fat counterparts, proposals have been submitted for new standards of identity employing the existing food names with the prefix "light" or "lite." These proposals were submitted to FDA over one year ago and have yet to be published in the Federal Register for subsequent action. As a result, dairy manufacturers are reluctant to market these products under alternate nomenclature, and these products are not being offered for sale to the extent possible. Due to the problems caused by the rather lengthy process to amend existing standards, we also have not seen any meaningful marketing of reduced calorie ice cream and ice milk products made with aspartame.

We would reiterate our statement that FDA be permitted to devote sufficient time and personnel to these issues. To assist in updating and streamlining the procedures to permit more expedited changes, we have urged the Commissioner to appoint a blue ribbon committee of qualified individuals from FDA, the states, the food industry, and consumer organizations to develop a mechanism by which the process for amending existing standards and establishing necessary new standards can be improved. The Milk Industry Foundation and the International Ice Cream Association would be pleased to participate in any such endeavor.

Standardized foods which utilize a descriptive term as part of the name of the food should be exempt from additional "descriptor" labeling regulations.

For many years, the dairy industry has been a food industry leader in providing consumers with reduced calorie and reduced fat alternatives. Many products, such as lowfat milk, lowfat yogurt, lowfat cottage cheese, and light cream have a long established identity with the public.

These products are currently subject to standards of identity which require the inclusion of the terms, "lowfat" and "light," as part of the name of the food. Based on their long history in the marketplace, we would urge the exclusion of these foods from any future regulations governing the use of these terms.

We applaud the recognition of standardized foods in the bill reported out of the House Subcommittee on Energy and Environment and would hope that the Senate bill would also allow for the continued use of these terms which are specified in standards of identity or which are, through use, the common or usual name of the food. We believe the use of such terms should not be construed as a "health claim" and thereby subject to the additional constraints of the health claims section.

Food descriptor claims help consumers identify food attributes. Label descriptors have been used to inform consumers about important and beneficial food attributes. These descriptors are an extremely useful way for food manufacturers to distinguish their products from others in the same category, and they help consumers find the products that have the qualities they are looking for out of the innumerable food items sold in stores today.

We believe the Nutrition Labeling and Education Act should allow the continued use of food descriptor claims so long as they are properly defined and are not misleading to consumers in the context of full nutrition labeling.

The regulations adopted by FDA to define descriptors for calorie content and sodium content were established only after intensive internal study and evaluation of data supplied by all interested outside parties. A similar procedure has been employed for the proposed set of cholesterol descriptors. We support this approach to defining terms which can accurately portray the relative amount of individual nutrients in a finished food.

Claims section is needlessly complex.

Providing full and accurate information on food labels about the nutrient content of foods, including label statements which characterize the amount of a nutrient in the food, can be helpful to consumers and should be allowed under the following conditions:

1) the nutrient characterized in the statement has nutritional significance as defined in regulations;

2) the statement uses terms which are defined in regulations;

3) the statement is accompanied by a reference to the complete nutrition label on the product; and,

4) the statement is not deceptive or misleading in light of the other nutritional properties of the food

We believe a provision in the bill spelling out these conditions could replace much of the complexity currently contained in the claims section of the Bill and would result in more helpful information for consumers than the complex test of whether a food contains a single nutrient which exceeds some guideline. Full disclosure and a prohibition against deception and misleading statements is the answer to properly permit consumers to evaluate health claims.

FDA should have full authority.

Instituting appropriate nutrition labeling changes will require adequate and systematic consumer research, market pre-testing, and evaluation of proposed label format changes before they become regulation. Proper coordination will ensure that companies are not faced with multiple label revisions. This approach should be spear-headed by the Food and Drug Administration.

Just as development of an appropriate nutrition label should rest with FDA, so should enforcement of any labeling provisions subsequently adopted. We oppose state enforcement as set forth in the Bill.

Timing of implementation.

For food processors, changing product labels is a big step requiring ingredient analysis, data gathering, and dissemination, as well as actual revision and reprinting of product containers and labels. These steps are an important part of the process and adequate time should be provided to allow proper revisions in a cost-effective manner.

Changing labels on virtually all food containers is a very expensive and time consuming matter. Often, companies' inventories of products may be sufficient to last well over a year, and inventories of packaging labels may be even longer. Discarding products or packages in inventories simply because they failed to meet any new nutritional labeling requirements within a few months of the finalization of a rule is inappropriate and should be avoided. The effective date should be established after considering these facts.

National uniformity and enforcement is essential.

The dairy foods business is highly competitive on a regional and national basis. In addition, consumers are more mobile today than ever before. It would be a mistake to allow a multiplicity of labeling rules, creating an impediment to interstate commerce and to consumer understanding. Labels should bear uniform information with direction and enforcement from the federal Food and Drug Administration.

The concept of national uniformity and enforcement requires equal labeling of all nutrients (macro, as well as vitamins and minerals), on all foods (including fast foods and those under USDA's jurisdiction, as well as FDA's jurisdiction.) It also includes the same rules and enforcement in all political subdivisions. Finally, it must not only include uniformity with respect to the specific provisions of this legislation, but also it must prohibit other state or local jurisdictions from required labeling which in any way conflicts or makes the labeling provisions of this legislation less effective.

In summary, the legislation introduced by Senator Metzenbaum (S.1425) falls short of providing full and uniform nutrition labeling and is far more complicated than necessary to accomplish the task at hand. Legislation introduced by Senator Hatch (S.1505), however, includes the necessary requirements for the Secretary of Health and Human Services to act and provides authority for the federal Food and Drug Administration to move forward expeditiously. While neither of these bills is broad enough in scope to encompass all foods on all occassions, we believe the approach of the Hatch bill is preferable.

Senator **Metzenbaum**. Mr. Cady.

Mr. **Cady**. Thank you, Mr. Chairman.

My name is John Cady, and I am president of the National Food Processors Association.

NFPA believes it is time for a national food labeling policy, one that takes into consideration nutrition labeling, health and safety warnings and other aspects of a food package that come under the heading of general labeling.

The consumer interest and need for a national labeling policy is apparent, and the need for all consumers, regardless of where they live, to have access to the same information is paramount.

A national, uniform, all-encompassing labeling system would satisfy these consumer needs.

It is also time to put strength into FDA by allowing the agency to fulfill its mission for the Federal Government and the Nation's consumers. There is no reason why a strong labeling law at the Federal level cannot be defined and enforced for all consumers across the country by FDA.

It is also time to address all labeling issues and refrain from leaving part of the issue open to further debate. We have arrived at a point that has taken us years to reach. We should take advantage of where we are and address the labeling issue on a national uniform basis rather than on a recipe basis and a basis which leaves issues open to individual, nonuniform State requirements.

It is time to answer the consumers' needs, and we ask that the committee enact the enabling legislation that is required. We ask that the committee allow FDA to do its job and establish a framework where the label and its rules and regulations are allowed to evolve from input from all interested parties, with the end result being a national uniform labeling system with mandatory nutritional labeling.

In the enabling legislation, the Congress should establish dates certain for FDA to complete its tasks and for dates for reports on its progress. I believe S. 1506, introduced by Senator Hatch, goes a long way toward achieving a national food labeling policy. The contents of S. 1506 should be discussed and its essential elements incorporated into any legislation reported out by this committee.

On the subject of health claims, we believe they must be allowed for communication with consumers and customers on the relationship of dietary and nutritional aspects of foods to health matters. Such claims should be accompanied by a statement clearly indicating that the product must be part of a well-balanced diet. Health claims should not require pre-clearance as the time involved for approval would be nonbeneficial to both the consumer and the industry. Pre-clearance would stifle new health and diet innovations. We do ask FDA to issue strong uniform health claims rules and regulations along with penalties for rule violations.

Health claims should have scientific backup data available, although release of competitive advantage and/or product formulation data must be addressed, or industry research on new improved products will cease.

Competitive advantages and product formulations must receive protection. Health claims must be truthful, not misleading, and subject to stringent enforcement.

Finally, NFPA believes that legislation should take into consideration the results of FDA's labeling initiatives now being carried out across the country through the agency's hearings. It is important that the Congress hear directly from the public as part of its labeling law deliberations. NFPA for its part has completed phase one of its consumer research study on labeling and has begun phase two, where we will show some 40 different labels to consumers utilizing many forms, graphic and others, to determine what type of label format and content consumers desire.

The results of this study will be made available to FDA, this committee and other interested parties.

NFPA strongly urges that resulting legislation require a national consumer education program which addresses the labeling system. A national uniform labeling law as part of an overall national policy must have a consumer education program for helping the public fully understand new labeling requirements.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Mr. Cady.

[The prepared statement of Mr. Cady follows:]

PREPARED STATEMENT OF JOHN R. CADY

Mr. Chairman, my name is John Cady, President of the National Food Processors Association, and I appreciate this opportunity to appear before your Committee today to address the issues raised by the Nutrition Labeling and Education Act of 1989. The National Food Processors Association, a scientifically based trade association representing over 600 companies in the food processing industry, was founded in 1907 in order to represent food processors on a broad range of legislative, regulatory and food safety issues. The Association has been deeply involved in a number of food labeling regulatory and voluntary programs over the years, including promulgation of standards of identity; net content labeling under the Fair Packaging and Labeling Act; nutrition labeling; health messages; our descriptive labeling program; date labeling; drained weight labeling; and sodium content labeling for all foods.

With reference to the instant bill, the food industry must start with the prerequisite that food labeling and safety requirements must be prescribed on a nationally uniform basis. Consideration and adoption of legislative or regulatory changes in food labeling requirements must involve full participation by all interested segments of our society, including government, industry, consumer advocate groups and, most importantly, individual consumers. The development of national labeling rules must recognize the complexity of the issues involved, and should not attempt a quick fix without all relevant facts and views being presented and considered. Congress must of course enact the necessary statutory authority, establishing basic guidelines and policies, but consideration and development of specific labeling requirements must be left, we believe, to the federal administrative process, based on the accumulated years of expertise of the FDA.

Once Congress and the FDA, working together in this fashion, have debated and resolved these issues at the federal level, it makes no sense for those who are dissatisfied with any aspect of the federal resolution of the issue to defeat its effectiveness by securing adoption of state requirements that impose additional, varying or inconsistent requirements for the regulation of food and food labels. The labeling policies and requirements that are appropriate for Portland, Maine, are equally applicable to Portland, Oregon.

Varying or inconsistent state labeling, health and safety requirements seriously undercut the effectiveness of federal statutory and regulatory policies and controls, and create confusion and uncertainty in the minds of consumers. They also seriously disrupt the interstate distribution of foods in a national market, and unduly burden local economies with unneeded costs which are passed on to consumers in the form of higher prices.

Indeed, it is paradoxical that at a time when Europe is well on its way to a unified market and the adoption of uniform regulation of products that move across national boundaries, some in this country are calling for the rejection of a national policy that is based upon adoption of uniform rules and the prevention of barriers to the free flow of food products in interstate commerce. Recent developments in Europe recognize the increasing global nature of food production, processing and distribution. Through Codex Alimentarius, countries throughout the world are agreeing to the need for labeling uniformity, and the freest possible distribution of food products without inconsistent or conflicting local or regional requirements. The United States' historic commitment to free trade in the distribution of foods militates strongly in favor of an explicit provision of federal law that prevents states or localities from imposing their own ideas about the labeling and contents of foods, and thereby disrupting both the national and international marketing of food products.

For these very fundamental reasons NFPA and its members believe that the starting point for consideration of totally new food labeling and regulatory schemes must be explicit acceptance of a national uniform system of food regulation. Once it is made clear that national, uniform labeling requirements relating to nutrition, health and safety will definitely be made a part of any legislation or regulation in this area, then NFPA will be more than willing to participate fully in proceedings in Congress and with the FDA to reach a consensus as to what specific labeling requirements should be adopted on a mandatory basis.

National uniformity will allow for a much needed nationwide nutrition education program that would go hand-in-hand with any new set of labeling rules. We must have a national nutrition education program so that government, consumer groups, industry, health organizations, the media and, most importantly, the consumer will be utilizing the same set of information regarding nutrition, dietary decisions, and food safety.

While our association, and the food industry in general, favor making the food label more responsive to the nutritional needs of today's consumers, we will not here attempt to deal with the specifics of the labeling provisions of this bill. We very strongly believe that any federal food labeling legislation relating to nutrition and health at this point should be confined essentially to assuring national uniformity and empowering the FDA to consider and develop revisions to its announced nutrition labeling program. To some extent the bill before us takes this approach by authorizing the FDA to propose and adopt regulations to carry out the manner in which the statutorily required information will be included in food labels and labeling. We are concerned, however, that in some respects the bill would pre-judge certain issues and seriously restrict FDA's discretion by imposing such recipe requirements as serving-size definitions for all foods, and compulsory declaration of calories derived from total fat and saturated fat well in advance of the label development process.

Another aspect of the bill that gives us some concern is the provision for the National Academy of Sciences to prepare a report making recommendations on the manner in which the required nutrition information is to be presented. The NAS is undoubtedly a most respected scientifically based institution, but it is not expert on consumer communication, it includes no industry representation, it provides for no consumer input, and as far as we know it has little experience or expertise on food labeling matters. If NAS believes it is able to contribute to the food labeling debate, then it should of course be free to do so, but we see no need for forcefully injecting NAS into the existing administrative process.

As the agency responsible for the implementation and enforcement of the Federal Food, Drug, and Cosmetic Act, the FDA must carry the burden of developing a public record that will support changes in nutrition labeling requirements. In order to make useful and effective contribution to that effort, NFPA has undertaken a major study to consider consumer perceptions and satisfaction with food labels, and to determine what consumers want and need in food labels of the future. We think this consumer study will provide important data that should be taken into account in any national effort to change food labels, and to be responsive to consumer desires concerning good nutrition and the selection of a healthy diet. The NFPA study will be completed by the end of the year.

Turning to the health claims provisions of the bill, NFPA is strongly of the view that the FDA has adequate authority to consider this issue and to adopt regulations that will serve the interests of consumers. Our Association initiated discussions with the FDA Commissioner in 1984 looking toward the modification of FDA regulations that purport to prohibit disease-related statements on food labels. We followed up these discussions with the submission of a Citizen Petition in the spring of 1985, formally proposing regulations that would permit health claims on labels, with adequate safeguards and standards for enforcement. We continue to urge the FDA to finalize regulations that are consistent with its proposal of August 1987, in order to ensure that appropriate health messages will be permitted and that irresponsible or unsubstantiated label claims will be promptly moved against by the agency.

Accordingly, we request that Congress leave the health claims issue in the hands of the FDA. Inclusion of the health claims provision in the bill would further delay the already protracted regulatory process. Here again, we believe that the FDA itself is in the best position to formulate labeling requirements and regulatory safeguards, and we see no need for the injection of this issue into the legislative process, where no new statutory authority is needed and where consideration of the issue could merely complicate the legislative process.

One particular aspect of the health claims provisions of the bill that gives the food industry extreme concern is the total prohibition of health claims unless every constituent in the food is present in amounts that would reduce dietary risk to persons in the general population. This provision is necessarily based on the concept that there are so-called "perfect foods" from which consumers can reasonably be expected to obtain balanced, acceptable diets.

There are, of course, no "perfect foods." Nutritionists emphasize that a wide variety of foods, eaten in moderation and as part of a balanced diet, are necessary for consumers to obtain all required nutrients, including those that may not yet have been identified or clearly established by science. Undue attention to a particular "bad" constituent -- such as by insisting that consumers should totally avoid foods that may be higher than others in that constituent -- would result in a seriously inadequate diet. There are no bad foods of themselves.

The Congress and federal regulatory agencies certainly have a role to play in consumer education and nutrition labeling, but they must not attempt to become the decision-maker as to what particular choices consumers must make in their diets. Federal guidelines and consumer education programs will help consumers select from a variety of foods to satisfy their tastes as well as their nutritional needs. A realistic approach to diet and health must account for widely varying consumer tastes and preferences due to lifestyle, ethnic background, geographic dietary customs, availability of foods, price, and other personal factors.

Accordingly, a national nutrition labeling program must not condemn certain foods as "bad." Instead, such a program must provide for fully informative labeling that enables consumers to arrive at their own choices and dietary schemes based on their individual tastes, needs and desires. Give consumers the priority facts they want, without information overload, and let them make their choices in putting together a balanced, acceptable diet. Any suggestion that there may in fact be perfect foods could encourage consumers to reject the basic staples of the American diet in favor of highly formulated specialty foods that substantially increase the consumer's cost without in fact assuring a balanced, healthful diet.

In summary, NFPA supports mandatory nutrition labeling legislation that will enable the FDA to consider all relevant views and information in the light of its own expertise, and then to promulgate nutrition and health labeling requirements that will be applicable on a uniform basis throughout the country. In our view, S. 1505, introduced by Senator Hatch, would provide an excellent starting point for consideration and enactment of legislation along those lines.

We again would like to express our appreciation to the Committee for this opportunity to appear and to take part in your consideration of this most important issue.

Senator **Metzenbaum**. Mr. Sherwin Gardner, vice president for Science and Technology at Grocery Manufacturers of America.

Mr. **Gardner**. Thank you, Senator Metzenbaum.

I am pleased to be able to submit the views of the Grocery Manufacturers of America today on S. 1425, the Nutrition Labeling and Education Act of 1989.

We agree that this bill is timely in that it would establish new labeling requirements in recognition of scientific knowledge and in that it responds to the public interest in nutrition and health information. GMA agrees that 15 years after nutrition labeling requirements were first established, there is a need to update labeling policies and requirements.

In that regard, there are several guiding principles in our view that should apply in the consideration of any new labeling law.

First, the Food and Drug Administration is the appropriate organization to undertake a labeling review because nutrition labeling questions turn on matters of science. Because FDA is a scientifically-based regulatory agency, it is well-positioned to determine the specific details of any nutrition labeling rules. We also believe it has sufficient authority to take on this task.

The second principle is that dietary, health and safety information must be based on the best and most current science available. Because scientific knowledge is continually changing, detailed labeling requirements should not be written into statute but applied by FDA through its rulemaking procedures.

The third principle concerns labeling requirements is that they should permit honest, meaningful communication with consumers and also permit sufficient flexibility for manufacturers to comply efficiently with those requirements. Our laws and regulations should establish appropriate rules that guide the way health and nutrition information is provided in labeling. However, we should not close off an effective way of communicating that information.

The fourth principle is that there should be a nationally uniform set of labeling rules for nutrition and health information. Valid health information is not a function of geography. Health knows no borders. Whatever the Federal Government establishes in the way of scientifically-based labeling requirements should apply uniformly across the country.

In general, S. 1425 is unduly rigid and restrictive in its requirements for nutrient declarations. No exceptions are allowed for food or nutrients that make an insignificant contribution to the diet. Further, it would virtually prohibit health claims for descriptors and for diet and health relationships. Finally, it does not establish national uniformity in food labeling, an essential component of health information policy.

In contrast, S. 1505, introduced by Senator Hatch, provides an appropriate balance of congressional policy direction and FDA implementation of that policy. We would recommend adding to the core group of important nutrients in that bill for which labeling requirements should be established.

We would also recommend that the scope of uniformity provisions be clarified. As written, they appear to affect some labeling provisions that are essential local, while they do not fall within the province of Federal interest. This bill, with some modification, would be supported by GMA.

Returning to S. 1425, we believe Congress should set labeling policy and deadlines and not write regulations into law.

The health claims section of S. 1425 is drafted so narrowly as to make it useless. We strongly object to the approach embodied in the bill which would require that FDA pass judgment on each claim. Clearly, claims should be scientifically valid, truthful, not misleading, and fairly represent the overall nutrition contribution of a food in the diet. We also agree that claims should be strictly enforced by FDA.

Finally, the issue of national uniformity. We have a national food supply system, Mr. Chairman, with consumers on the West Coast eating the identical, nationally marketed food as their counterparts on the East Coast. Congress should establish the policy on what health information should be borne, be it nutrient content or other health information about a food.

Mr. Chairman, again, we believe that the time is right to establish a modernized and nationally uniform food labeling policy and look forward to working with the committee to achieve that objective.

[The prepared statement of Mr. Gardner follows:]

PREPARED STATEMENT OF SHERWIN GARDNER

Mr. Chairman and members of the Committee on Labor and Human Resources, I am Sherwin Gardner, Vice President for Science and Technology of the Grocery Manufacturers of America, Inc. (GMA). GMA is an 80 year old national trade association comprised of 139 companies that manufacture food and other products sold in retail grocery stores throughout the United States. GMA member companies employ over 2.3 million people and have annual sales in excess of $280 billion. We appreciate the opportunity to share our views on food labeling with the Committee.

The food labeling requirements that exist today have evolved over a period of more than 80 years, beginning with enactment of the 1906 Food and Drugs Act. These requirements, by and large, have served the public well, providing both health and economic protection. The most recent major policy change in food labeling requirements was the establishment of nutrition labeling regulations by FDA in January, 1973.

Several significant changes in nutrition labeling rules have been introduced or proposed by FDA since 1973:

1-Sodium content labeling: This was added as a component of nutrition labeling in July, 1985;

2-Cholesterol and fatty acid content: These requirements were proposed as additional mandatory components of nutrition labeling in November 1986;

3-Diet and health information: Conditions and criteria for labeling foods with this information were proposed in August, 1987.

These changes were introduced in response to developments in nutrition knowledge. Recognizing that research in the nutrition sciences has materially advanced at a rapid pace in the past 15 years, however, we agree that it is timely to review the kinds of nutritional and health related information that the federal government requires on packaged food labels. Indeed, the issuance of significant reports by the Surgeon General in 1988 and by the National Academy of Sciences in 1989 provides a valuable resource of material relating diet, nutrition and health that should help this review.

S. 1425, the Nutrition Labeling and Education Act of 1989, is timely in that it would establish new labeling requirements in recognition of scientific knowledge and in that it responds to the public interest in nutrition and health information. GMA agrees that there is a need to update labeling policies and requirements.

In that regard, GMA believes that several guiding principles should apply in the consideration of any new labeling requirements:

1-FDA is the appropriate organization to undertake a labeling review. Because nutrition labeling questions turn on matters of science, and because FDA is a scientifically based regulatory agency, it is well positioned to determine the specific details of any nutrition labeling rules. Further, it already has sufficient authority to take on this task.

2-Dietary, health and safety information must be based on the best and most current science available. Because scientific knowledge is continually changing, detailed labeling requirements should not be written into statute, but applied by FDA through its rulemaking procedures. Through oversight and resource appropriations, Congress can assure that labeling reflects contemporary knowledge and needs.

3-Labeling requirements should permit meaningful communication with consumers and also permit sufficient flexibility for manufacturers to comply efficiently with requirements. Newspapers, television, magazines, and radio all provide consumers with news about developments in nutrition knowledge; and government and private health institutions also provide such information. Food labeling complements this information and gives consumers a practical way to apply it. The FTC reports issued last August conclude that health information in food labeling is helpful to consumers. Our laws and regulations should establish appropriate rules that guide the way health and nutrition information is provided in labeling, but we should not close off an effective way of communicating that information.

4-There should be a nationally uniform set of labeling rules for nutrition and health information. More than ever, food labeling serves as an important way to effectively communicate health information to consumers. Indeed, the principal objective of the bill is to help consumers select foods that satisfy their personal health objectives. Valid health information is not a function of geography: Health knows no borders. Whatever the federal government establishes in the way of scientifically based labeling requirements should apply uniformly across the country.

In light of these principles, we would like to make the following comments concerning S. 1425, the Nutrition Labeling and Education Act of 1989.

In general, S. 1425 is unduly rigid and restrictive in its requirements for nutrient declarations; no exceptions are allowed for food or nutrients that make an insignificant contribution to the diet. Further, it would virtually prohibit health claims--for descriptors and for diet and health relationships. Finally, it does not establish national uniformity in food labeling, an essential component of health information policy.

In contrast S. 1505, the Food and Nutrition Labeling Act of 1989, provides an appropriate balance of Congressional policy direction and FDA implementation of that policy. We would recommend adding to the core group of important nutrients identified in the bill for which labeling requirements should be established. We would also recommend that the scope of uniformity provisions in S. 1505 be clarified. As written, they appear to affect some labeling provisions that are essentially local or that do not fall within the province of federal interest. This bill, with some modification, would be supported by GMA.

Returning to S. 1425, we believe Congress should set labeling policy and deadlines, and not, in effect, write regulations into law. The details of nutrition labeling decisions are best left to FDA since there are numerous technical details that require consideration. For example, although there is a provision which would exempt certain foods which do not contain significant amounts of all of the specified nutrients, there is no flexibility to allow a simplified labeling presentation for foods that contain insignificant amounts of most nutrients.

The health claims section of S. 1425 is drafted so narrowly as to make it useless. We strongly object to the approach embodied in the bill which would require that FDA pass judgment on each claim. Clearly, claims should be scientifically valid, truthful, not misleading, and fairly represent the overall nutrition contribution of a food in the diet; we also agree that claims should be strictly enforced by FDA. Toward this end, we respectfully recommend that FDA be directed to finish its rulemaking already begun in an appropriate time frame.

Finally, the issue of national uniformity. Mr. Chairman, health knows no borders. We have a national food supply system with consumers on the West Coast eating the identical, nationally marketed foods as their counterparts on the East Coast. Congress, in our judgment, should establish the policy on what health information the food should bear, be it nutrient content or other health information about a food.

Congress, not the states, should decide what diet and health information should be on food marketed in interstate commerce. Under this approach, however, FDA and the States should concurrently enforce identical health information requirements. The absence of labeling uniformity provisions makes this legislation unacceptable to GMA. Mr. Chairman, we believe that the time is right to establish a modernized, nationally uniform food labeling policy. We look forward to working with the committee to achieve that objective.

Senator **Metzenbaum**. As I understand the position of GMA, you don't support S. 1425, and you also have some difficulties with the Hatch bill. Is that correct?

Mr. **Gardner**. We believe our difficulties with the Hatch bill are more easily overcome than the difficulties we have with S. 1425, sir.

Senator **Metzenbaum**. Thank you. I just wanted to be certain I understood that.

Mr. George Burditt, of Burditt, Bowles and Radzius.

Mr. **Burditt**. Mr. Chairman, thank you very much for allowing me to appear this morning. Actually, I have on two hats; I'll try to wear them one at a time. The first one is for an association that isn't very often heard of in these halls. It is the Association of Food and Drug Officials, which is the professional association of the State and also Federal and local food and drug law enforcement officials. Now, quite obviously, I am an industry lawyer, not a member of that association. I am only an associate member. But the president of that association who this year is Edsel Moore of Kentucky wrote me a letter and asked if I would make a statement for him this morning. Let me read you two paragraphs, if I may, of his letter, because it will spell it out, and the letter is attached to my statement.

"Dear George, I understand that you are testifying at the hearing on Senator Metzenbaum's labeling bill. I hope you can work into your testimony some comments on the dedicated commitment of the Association of Food and Drug Officials to the concept of uniformity.

"Like all of my predecessors as president of AFDO, I am personally committed to support and encourage uniformity between the laws of the United States and the laws of the several States and among the laws of the several States. Indeed, AFDO's slogan, which appears on its banner and on this letterhead, is 'Uniformity through cooperation and communication.' "

Mr. Chairman, that position of uniformity by the Association of Food and Drug Officials is one which has been taken for many years. It is really based on three different interests, all of which coincide on this issue. The first is the interest of consumers, which the panel which preceded us so articulately presented. We have a very fluid society, and it is just as important for consumers in Washington, the State of Washington, or California, or New York, or Ohio, or Utah, or anywhere else to receive the same information. This can only be done if we have uniform legislation and regulation and policies.

The second reason for it is really the enforcement officials themselves can do a much better job and be much more effective if they are enforcing the same laws and regulations wherever they are.

And of course the third reason is that industry will be able to comply better if industry knows what is expected in one State, in all States, as well as in the United States, they can follow those lines. Unfortunately over the last few years, we have drifted off from that, and now industry is in a position where they are not sure what they have to do.

It is very important, and Mr. Chairman, you should be commended for your leadership in bringing this industry and the enforcement officials and consumers together in accomplishing that purpose through uniformity.

While I personally agree with all of those statements that I have just made on behalf of the Association of Food and Drug Officials, I did want this committee and particularly, Mr. Chairman, you to know that the association itself, which is dedicated officials who are devoting their lives to the protection of consumers, are very interested in this issue of uniformity.

Now let me take off that hat and put on my own hat, which is an industry lawyer. I represent firms who are facing these daily problems of how do they comply with the laws in their labeling requirements.

My comments, of course, I agree with virtually everything that these three gentlemen have said with that hat on, but let me just make two points. First of all, as to health claims, everybody believes, I think, that health claims of some kind should be allowed. The question is what quantum of proof do you need before you can make a health claim. The rules aren't very clear on that now, and they need to be made clear.

Your bill, Mr. Chairman, makes a significant step in that direction by saying "no significant scientific disagreement". I think that is certainly a basis for doing it. I would prefer, Mr. Chairman, that you take a positive approach to it; instead of saying "no significant disagreement", say that there is "significant scientific support" for the claim. That lets an industry who has a peer-reviewed, published study make a claim, and if the claim is not supported by that kind of evidence, it may not be made. There is never going to be consensus among the scientists in this industry. If I have ever learned anything in my 40 years of practicing food and drug laws, it is that scientists are as diverse on this as lawyers are. They are all over the lot. But if this committee can establish a positive rule of letting the industry decide whether there is adequate scientific support for a position, let them take it.

The other point that I would like to make goes to nutrition claims, and that is the position which was taken at the very outset, and certainly, Commissioner Young took—this is a very difficult area. There is great complexity, and it is important for consumers not to be misled by all kinds of different information, some of it irrelevant, on the labels. I suggest that this is such a fast-moving food technology field that the committee and consumers would be better served to provide a bill which would let FDA keep current as new developments come along, and they do come along—we don't even know in 1989 what is going to be necessary or desirable for consumers in 1990. I believe that an agency is better equipped to do that. I was in the Illinois legislature for 8 years, and it is hard for me to say that the legislature isn't omnipotent and omniscient on everything. But I really believe that in this particular circumstance that the legislative branch should yield to the administrative branch.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you very much, Mr. Burditt, and I appreciate also your submitting the comments on behalf of the association of State regulators. They call for uniformity; as you know, our bill provides for uniformity. So we interpret that as being neither forward nor backward support for our legislation, and we would be happy to include that gentleman's letter in the record if you want to have it in the record, but that is optional with you.

Mr. **Burditt**. I would appreciate it, Senator, and it is attached to my statement that has been submitted for the record.

Senator **Metzenbaum**. Thank you very much.

[The prepared statement of Mr. Burditt (with an attachment) follows:]

PREPARED STATEMENT OF GEORGE M. BURDITT

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony on the proposed "Nutrition Labeling and Education Act of 1989." This is one of the most important subjects facing our country, and all three branches of government. It is obviously presumptuous of me to thank you and congratulate you for entering this thicket, but after forty years of practicing law in the private sector, virtually exclusively in food and drug law, I join with many others in expressing our appreciation to you for undertaking consideration of the important subjects of nutrition labeling and education.

Today, I am wearing a couple of hats. First, I am honored to have been asked by E. Edsel Moore, this year's president of the Association of Food and Drug Officials to convey to you AFDO's dedicated commitment to the concept of uniformity. AFDO is the professional association of state, federal and local food and drug law enforcement officials. It was founded in 1897, and for almost 100 years, through its members individually and collectively, has promoted consumer protection by helping to assure the safety and proper labeling of the American food supply. For many years, AFDO's slogan has been "Uniformity Through Cooperation and Communication."

Attached to these comments is a copy of Mr. Moore's letter of October 20, 1989 to me asking me as an Associate Member of AFDO, to say a few words on AFDO's behalf on the issue of uniformity between federal and state laws, and among state laws. AFDO's position is based on three primary factors:

1. Consumers are the chief beneficiary of uniformity. With the development of multi-state urban complexes, and with the increasing mobility of the American populace, consumers are entitled to be able to count on the fact that their food is equally safe anywhere in the United States and that food packages will give them the same labeling wherever they live or move about the country.

2. Law enforcement is quicker and more certain if federal and state officials are enforcing uniform laws and regulations. The same ingredients should be prohibited or permitted everywhere in the country, the same names should be used for

products, the same descriptors should be allowed or disallowed, and the same labeling, particularly nutrition labeling, should be required or prohibited throughout the country.

3. Food manufacturers and labelers will know precisely what is expected of them. There will be no incentive to take advantage of different laws, regulations or enforcement policies between the federal government and an individual state, or among the states.

Of course hanging over all of this issue of uniformity like a black cloud is Europe's comprehensive move toward uniformity in 1992. Having experienced the detriments of diverse laws and regulations, and sensing the benefits of uniformity, the European Community is moving toward uniformity. How strange it would be if the United States, having enjoyed the benefits of uniformity, would suddenly go the other direction and balkanize our food labeling policies.

So, Mr. Chairman, in behalf of the Association of Food and Drug Officials, I urge uniformity in our labeling laws.

Now, Mr. Chairman, I would like to put on the hat that I have worn for many years, the hat of a lawyer who has represented various segments of the food industry almost full time since I was admitted to the bar. In that capacity, I have seen all kinds of fads come and go, have worked frequently with, and occasionally against, federal and state officials on labeling matters, have seen standards of identity totter from their pedestal of sanctity, have helped from the legal side in the development of foods for special segments of our population like infants and children and have seen the burgeoning use of descriptors like "low" and "light."

All of those issues, and of course many others need to be addressed by Congress, by the executive branch and perhaps eventually by the judicial branch. Since I have taught food and drug law at Northwestern University School of Law for about a quarter of a century, I hope you will excuse, Mr. Chairman, if I make some observations which may sound pedantic but they are also based on my personal experience.

Food technology is a rapidly advancing science to the great benefit of consumers. Statutory enactments and regulatory promulgations must be crafted to avoid freezing into our body of law rigid concepts which may soon be outmoded by advances in food science. With that important concept in mind, let me give some examples:

1. Standards

Standards of identity, quality and fill of container were authorized by the 1938 Act, and in general have provided consumers with assurance of nutrition, constant uniformity and appropriate labeling. The Hale Amendment facilitated the procedure for changing standards, but consumer groups and industry alike shudder at the prospect of trying to persuade FDA to make appropriate amendments. I urge the Congress to establish an Advisory Committee representing consumers, the food industry and the appropriate fields of science to assist FDA in making certain that standards are kept current with consumer needs and new developments in food technology. Concepts like the alternate make-procedure clause in most of the cheese standards, and the allowance of "safe and suitable" ingredients, permit industry to utilize scientific advances for the benefit of consumers.

2. Nutrition Labeling

Nutrition labeling obviously needs attention and, in my opinion, should be made mandatory. The key questions of course are what should be made mandatory, and who should establish the rules. Let me address those issues separately.

What should be made mandatory depends on the advice of experts in food technology, nutrition and food safety. It is a masterpiece of understatement to say that the experts are not in agreement at any point in time, and that their views change over a period of time. Therefore I urge the Congress to adopt broad policies enabling the experts within the federal agencies, in consultation with experts in academia and the food industry, to take advantage of developing technology and new discoveries, all to the benefit of consumers. The Advisory Committee could perform this function. That is the best way to determine what should be included in nutrition labeling.

Who should make those determinations is an equally important matter. From my eight years in the Illinois legislature, I am fully aware of the temptations of a legislator to make the decisions directly. Congress, because its range of responsibilities is far greater than a state legislatures', necessarily cannot be omniscient in all of the multitude of fields of legislative endeavor. Nor can legislative bodies usually act sufficiently quickly to utilize new developments. For that reason, I urge the Congress to set forth clear and unambiguous guidelines, but to leave implementation of the policies to the agencies, particularly FDA in the case of food safety, nutrition labeling and health messages.

Whoever determines what should be included in nutrition labeling should bear several concepts in mind:

a. Confusion will result if too technical or too much information is required.

b. The special nutritional needs of infants and children must be considered.

c. Future changes are inevitable as knowledge unfolds. For these reasons I urge Congress to designate FDA as the who to prescribe specific rules.

The question of who also involves the states. State legislatures should clearly not be involved in establishing nutrition labeling requirements, nor in my opinion should state administrative agencies. State lawmakers and administrators are subject to too many local pressures not necessarily beneficial to consumers. Therefore, Congress and FDA should set the requirements on nutrition labeling which must be followed throughout the country. An escape clause in case a state has a particular problem might be justified if the federal agency approves.

3. Health Messages

Health messages must be addressed by Congress and the agencies. We know far more now about the importance of food to health than we did when the Act was originally passed in 1938. Again the questions are what should be required and who should do the requiring. In addition, the quantum of proof necessary to justify a health message must be addressed.

Unfortunately, the scientists are not in agreement as to what should be required in the interest of consumer health and information. Mr. Chairman, I am sure your files are full of conflicting views, and views with differing emphasis, expressed by scientists of equal competence. These views are changing almost on a daily basis. No one can say that what appears to be appropriate in 1989 will continue to be appropriate even in 1990.

That of course leads directly to the question as to who should do the requiring. Under these circumstances, for Congress, and a fortiori for state legislatures, to do the requiring I submit would be a mistake. Rather, Congress should lay down clear rules for administrative agencies to follow as science develops. Experience tells us, however, that Congress should establish explicit time constraints on FDA, and should monitor FDA's implementation of the national mandate. And in the interest of consumers, to assist those members of industry who are seeking federal guidance, and above all in the interest of uniformity, please give FDA a short string! FDA can act expeditiously and efficiently, as they did in the tamper resistant packaging regulation, and rules on health messages are critically needed now.

As to the quantum of proof needed to justify a health claim, again I urge Congress to establish a guideline. But the guideline deserves careful attention. If the guideline is "consensus," I suggest that consumers may never get the benefit of health messages. At the other extreme, if health messages justified by a single in-house study are authorized, confusion will proliferate and consumer confusion will abound. I suggest that Congress prescribe a middle course, authorizing the approval of health messages based on peer-reviewed published studies. Explicit terms governing the quantum of proof necessary should be established by FDA, again with a tight time line.

In no area is national uniformity more important than in health messages. A health message supported by published, peer-reviewed studies is equally important to consumers in Ohio, Texas, Utah or any other state. The Congress should require uniformity on this issue.

4. Safety

Americans in every state are entitled to a uniform assurance of safety. To allow one state to impose special safety rules based on the whim of a local interest group is sheer folly. It implies that consumers in the other 49 states are not entitled to the same assurance of safety. It implies that the federal government and the other 49 states are not concerned about the safety of their citizens. It undermines consumer confidence in the Congress, state legislatures, federal and state administrative agencies, and indeed in our entire system of assuring the safety of the American food supply. With all of the effort that Congress, FDA, USDA and other federal agencies have expended to assure safety, it is unfortunate that dedicated but misguided local organizations are attempting to undermine public confidence in the national effort. Congress should put a peremptory end to such efforts by preempting any state or local safety labeling requirements which are in addition to or different than federal requirements.

Mr. Chairman, thank you for your courtesy in permitting me to testify before you today.

11/13/89

Association of Food and Drug Officials
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RECEIVED [illegible] 1989

October 20, 1989

Reply to: E. EDSEL MOORE
President
Division of Radiation & Product Safety
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George Burditt
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Dear George:

I understand that you are testifying at the hearing on Senator Metzenbaum's labeling bill. I hope you can work into your testimony some comments on the dedicated commitment of the Association of Food and Drug Officials to the concept of uniformity.

Like all of my predecessors as President of AFDO, I am personally committed to support and encourage uniformity between the laws of the United States and the laws of the several states, and among the laws of the several states. Indeed, AFDO's slogan, which appears on its banner and on this letterhead, is "Uniformity Through Cooperation and Communication."

AFDO may very well have comments on the substantive portions of the Metzenbaum bill, but at the hearing the point I would greatly appreciate your stressing is our interest in uniformity. You have been an associate member of AFDO for about as long as anyone has, and have been chairman of our Associate Member Committee three times. Your AFDO knowledge and experience clearly qualify you to advise Senator Metzenbaum and his colleagues as to the rationale for our interest in uniformity.

Sincerely,

E. Edsel Moore
President

EEM:ng

Senator **Metzenbaum**. Let me ask a few questions—and I appreciate the comments of each of the witnesses.

Is there or is there not a feeling by many in the food industry that the whole question of labeling has gotten out-of-hand and that claims have gone too far? You have seen some of the claims here today.

Here is one that I got a kick out of. This is a Sara Lee strawberry cheesecake—looks pretty good, as a matter of fact—which says, "Surprise—only 200 calories per serving". That sounds pretty good. But then, if you look at the serving size information which is to be found elsewhere, it tells you there are 10 slices in the pie. So for the 200 calories, you get this little, tiny piece of strawberry cheesecake.

Now, frankly, I am not a big eater, but that is a pretty small serving size for the 200 calories. I just wonder whether you in your experience haven't seen a number of these misleading representations, and don't you feel there is a need for us to do something about that?

Mr. **Tipton**. Mr. Chairman, I would start the comment on that. I think everybody can find lots of examples of foods that their labeling could be improved. There is no question about that, and we are supportive of some changes in that regard.

I guess our major concern, however, is that we don't throw out the baby with the bath water, because we believe that there are a number of things that are currently good about our nutrition labeling scheme, and we want to make sure that those are maintained.

For example, we are concerned that lowfat cottage cheese—a standardized food, prescribed by the Food and Drug Administration, has been on the market for many, many years. It is a product that has about 1 gram of fat, has less than 5 milligrams of cholesterol, but it might be slightly high on the sodium side. We are concerned that under the stringent requirements of the legislation as you have drafted it that that nutritious food—and I think everybody would agree that it is a nutritious food—might not be able to stay on the market. We think that we may be going too far in trying to correct some of the problems that easily you can identify; certain areas, you can identify, but others you may need to take another look at.

Senator **Metzenbaum**. Well, Mr. Tipton, I think you are sort of making the case that I have made all along. For years, I have been saying to the industry, "Come, let us reason together and let us work this out," and we have spent untold number of hours doing that. I remember talking with Mr. George Cook of the Grocery Manufacturers Association and saying early on let's see if we can't work this out.

Now, we don't take any adamant position. We don't think we are very obdurate. We think the bill represents that fact. But I have to say to you that we are concerned about the very point you make. I think that not all parts of the industry, because as you well know, some segments of the industry have indicated a willingness to support our legislation and at the appropriate time, we will be discussing that publicly. I've been around this Senate long enough, and when I sat on the legislature many years ago and then subsequently as a lobbyist, I pretty well learned the best legislation comes about when those who are affected negotiate with those who are pushing the legislation. Both groups can then try to work out an efficacious manner of passing the bill. Otherwise, you win some and you lose some. And I know of no better example than what has occurred with respect to labor legislation. When we passed the Wagner Act originally, the pendulum was way over here. Then subsequently, we moved over to the Landrum-Griffin bill and the Taft-Hartley Act, and we moved in the opposite manner—probably somewhere in between is where the legislation should have been.

So we think that there is a pretty good sense of movement on this subject of food labeling today. We think the Food and Drug Administration recognizes that movement. We are aware of the fact that OMB is less than supportive of legislation. But I would say to the industry that the American people are demanding something, and if they don't get it this way, they'll go to the initiative. In my own State of Ohio the initiative is open, and I'm certain the initiative is open in other places in this country. We know that California has used the initiative quite often.

I would just say to you that we are not looking to do anything to harm the food industry. We are proud of the food industry in this country. But we think that there needs to be some movement on the part of the food industry to work with us, work with Senator Hatch as well as myself, to come up with a bill that you can live with, but that will meet the demands of the American people. Every poll that you take indicates the American people want to know more about what they are ingesting. They are concerned about their health, they are concerned about the food that they eat. And when the door is open, and when Senators are saying, "Come, let's work together," and there is a kind of obdurate position that, "No—we won't do it unless you preempt the matter of safety and preempt the California law in that area," we think you are mixing apples and oranges. The two are not in the same box. Unless you go forward to have food safety legislation as well as other safety aspects—pesticide safety—you can't expect this bill to solve the problem that some of you are experiencing in California. I can't say it much more strongly than that.

We think it is time to change your position. You might beat us this week, this month, this year, but we will be back, and so will the people of the country; they will not be slowed down; they are demanding action. Mr. Gardner.

Mr. GARDNER. If I could take just 2 minutes, Senator Metzenbaum, because you mentioned Mr. Cook, who happens to be my boss, I thought I might insert a word or two.

We have been willing to come and negotiate on food labeling, and indeed have done so and remain willing to do that. The question of health claims is one that was somewhat of a late-add to the issue agenda, and I don't think we have had an adequate opportunity to fully explore that——

Senator METZENBAUM. Excuse me. What question was the late-add, did you say?

Mr. GARDNER. Health claims. We have not had an adequate opportunity to explore that with your staff, and we look forward to doing that.

I do feel that on the question of uniformity—people can differ on this interpretation, sir—but we think there is an artificial distinction being made between food safety and nutrition labeling. The nutrition labeling bill is designed to be a health promotion measure, and so too are warnings that California and other States are interested in putting on food labels.

The whole question is the common denominator of health. The Cancer Society was here this morning to speak in behalf of the bill because they believe that nutrition information will help prevent some forms of cancer. If cancer is a cause for putting warnings on food, that is a health issue. So that is where we are coming from when we look at the bill that is designed to modernize food labeling requirements. That bill is a health bill, and we believe that all health information that appears on the label should be made nationally uniform in its requirement. That is the essence of our view on that. Thank you.

Mr. CADY. Senator, if I could just add a little bit to that, in my opening statement I talked about a national food policy, and I think it is time that we had a national food labeling policy.

I don't think we need patchwork legislation. If you have got two or three pieces of legislation that are addressing the same subject—and when I am talking about the same subject, I'm talking about the package that you have held up, or other packages—the consumer looks at that package as a totality. They don't break it out in terms of this is a nutrition labeling bill, this is a safety bill, this is a food warning bill; what am I going to do in California versus when I spend time elsewhere, like my mother with me in Virginia?

Why do we have to make this distinction? I have heard the arguments, and I have not been swayed at all by any of them that say that there should be a difference between nutritional labeling and food safety warnings. I think we need to take this time where we are right now to try to take care of this. If it is going to be thorough legislation, then it ought to be all-encompassing and address what is totally on that package and not half a loaf, which I think is where we are going right now.

Additionally, I think that there has to be some flexibility, sir, because as you know, you pass legislation now; as was mentioned earlier, 2or 3 years from now, things change, and we can't keep going back to the drawing board. I think we should not cut the regulatory process out. We have a regulatory system that has been developed over the years, and I think we ought to let it work.

As far as negotiations are concerned, sir, we stand ready to sit down and talk with you, along with the other food groups here, with the FDA, and with Senator Hatch. I think we ought to not discount his input into this bill and into this process, and I think we ought to sit down—we are willing to sit down and talk about it.

Senator METZENBAUM. We don't discount Senator Hatch's input.

Mr. CADY. I didn't say that. I said in the overall framework, I think we ought to make sure it is included in our discussions, sir.

Senator METZENBAUM. I think my staff is marrying some of his staff, they spend so much time back and forth together.

Mr. CADY. Well, that's good. [Laughter.]

Senator METZENBAUM. And his office is right across from mine, so we work together very closely.

Mr. **Cady**. Thank you. Thank you for your time, sir.

Senator **Metzenbaum**. I'd say to you that the door is open to you. We want to pass a bill, we expect to pass a bill. We are going to give it a full court press, and if you have some points that make some validity, we are willing to listen to them.

Mr. **Cady**. I'd like to just clarify two things, and I don't want to get into a controversy, but there was a statement made by a previous witness, and I'm not going to get into an argument about it, but I do want to make a point of clarification for the record.

Mr. Silverglade talked about 25 percent of cans are lead soldered, and children among others suffer blood poisoning from lead that leaks into food cans. My position on that, sir, is that that just is not true, and if we are going to discuss that type of thing here, we ought to be able to provide proof for what we're talking about and not just statements and walk away. Thank you, sir.

Senator **Metzenbaum**. Thank you very much, and certainly, Mr. Silverglade had the right to make his comment and you have the right to refute it, but we don't monitor what people say before the committee.

Mr. **Burditt**. Mr. Chairman, your statement that this is a fast-moving technological field with changes coming along all the time leads me to two conclusions. One is that the agencies ought to be making the decision to keep current with that. The second one is that certainly on food safety issues, the Congress ought to preempt the field so that when these changes come along, they will be taken care of nationally and not on an ad hoc basis from State to State, with 50 different rules. That just can't be handled by our country.

Senator **Metzenbaum**. Well, Mr. Burditt, you are aware of the fact that Dr. Young did put into the record the letter from OMB with reference to the matter of preemption——

Mr. **Burditt**. Yes.

Senator **Metzenbaum** [continuing]. And making it very clear the administration does not support preemption. Now, I've got enough of a problem getting this bill through the Congress without trying to find a way to take on the President as well, and I think that we have to be realistic. It is nice to say preemption, but the administration says categorically that they do not support preemption.

Mr. **Gardner**. That letter, Mr. Chairman, is quite a bit older than the President's current position. I suggest that that has been revised by events. The President's statement on pesticide residues that was just issued 10 days ago took a position in favor of preemption of States. So I think that that letter is a little out-of-date, sir.

Senator **Metzenbaum**. I think his position is that if a standard is set up that he favors preemption. But we are not setting up a standard in that respect. But we'll be happy to explore all these issues with you promptly. Yesterday was too late. Let's move forward.

[Additional statements and material submitted for the record follow:]

PREPARED STATEMENT OF THE AMERICAN ACADEMY OF PEDIATRICS

The American Academy of Pediatrics strongly favors nutrition labeling of as many foods as possible, including foods for children under the age of two. Parents need information to make wise food choices for their children. Food labels offer an excellent opportunity to have such information available at the time of purchase.

The labels should list the content of protein, fat, carbohydrates, (the energy nutrients) as a percent of calories in the food, in addition to identifying the grams per serving. The major constituents of fats, namely saturated, monosaturated, and polyunsaturated fatty acids should be stated. Any additive or preservative that may contribute calories to the food should be identified on the label. When there is more than one serving per container, the number of servings should be clearly displayed.

A second issue of concern to the Academy is the use of health messages or health claims on foods. We oppose the placement of health messages or health related claims on foods. Health messages based on clinical data obtained from the adult population could be inappropriate, even harmful for children. The nutritional needs of children differ, sometimes markedly from those of adults. However, once infants graduate from a diet of baby foods, the foods they are served are generally the same as what other family members are eating. The proposals allowing generic health claims do not reflect this reality.

In addition, health messages often highlight only one ingredient in a food item, without providing full disclosure of the nutritional value of other ingredients. Nutrition and health are too complex and multifaceted to be reduced to one line cues.

We are also concerned that promotional competition will lead to abuses which could have adverse effects on consumers, particularly children. Examples include publication of dietary information before the information is scientifically validated and advertisement of foods fortified with nutrients that may not be beneficial.

Comprehensive labeling of foods is an important, useful vehicle for educating the public. Labels on as many foods as possible provide an excellent opportunity for food manufacturers to inform rather than persuade consumers of the value of their product.

November 7, 1989

PREPARED STATEMENT OF THE SNACK FOOD ASSOCIATION

The Snack Food Association ("SFA" or the "Association") is pleased to present its views for the Record on S. 1425, The Nutrition Labeling and Education Act of 1989. The Association is a non-profit international trade association representing over 480 domestic manufacturers and suppliers involved in the making and distribution of more than 95 percent of the snacks made from vegetables, grains, fruits, meats, and nuts consumed in the United States. Although there are corporate giants in our industry, the majority of our member companies are moderately small, family-owned, regional businesses.

The Association supports nutrition labeling. Over 90 percent of our snack products (based on a percentage of sales) carry a nutrition panel according to the FDA's Food Label & Package Survey (1988). SFA supports current efforts to modernize the nutrition panel. The Association believes the nutrition label should provide nutrient information that is useful, scientifically accurate and responsible. The Association believes that the current format is complex, outdated and too rigid.

S. 1425 requires that the labels of packaged food products subject to the jurisdiction of the Food and Drug Administration disclose the amount of total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, total protein, dietary fiber, total calories, fat calories and saturated fat calories per serving or other customarily used unit of measure, which may not be appropriate for all foods. For example, dietary fiber would not be expected to be labeled in such products as cheese and milk, but would be appropriate for cereals and vegetables. Thus some degree of nutrition labeling flexibility is desirable.

The Association supports mandated labeling for "macro-nutrients" (i.e., calories, protein, total fat and carbohydrates) when combined with uniformity of health, safety and nutrition information. SFA supports voluntary labeling of "micro-nutrients" (i.e., vitamins, and other nutrients).

We feel that the multiple labeling of fat, which would be required if this bill were passed, would be confusing and unnecessary. Multiple labeling would result from the two methods required in the bill itself, which are, the labeling of the number of calories derived from fat and saturated fat per serving and the grams of fat, saturated fat and unsaturated fat per serving, plus the requirement under current regulations that the percentage of calories per serving derived from fat be disclosed. We support the requirement of labeling grams per serving of total fat only. The latter method (grams per serving) is the most useful to track the total daily intake of fat.

Revisions to the nutrition label should not include the percentage of calories from fat or saturated fat. Such labeling can only be used relative to the total dietary intake of fat in planning complete diets. This type of labeling shifts the emphasis from the total diet to individual foods and facilitates the inappropriate designation of "good foods and bad foods." Certain foods, such as lean meats, poultry, and cheese contain a substantial portion of their total energy as fat. However, these foods, representing two of the four basic food groups, are important contributors of other nutrients essential to a balanced diet. Reduction in the intake of these products because of a desire not to eat any foods containing more than 30 percent of calories from fat, could result in micronutrient deficiencies. Additionally, percent of calories cannot be added, but grams of fat may be added to reflect the total daily intake of fat.

S.1425 presents an attempt, among other things, to better educate the consumer regarding consumption of saturated and unsaturated fatty acids. Yet, meat, poultry and dairy products, which contribute approximately 60 percent of the saturated fats in the total diet, are not covered by this legislation. The Snack Food Association believes, in the absence of a consensus of opinion regarding the benefits and detriments of the consumption of specific fatty acids, that the information required by this bill overemphasizes the fat content of packaged food products and is too complicated for the average consumer. While food manufacturers welcome a knowledgeable and fully informed consumer, we are alarmed by the potential distortion in buying decisions made possible by a lack of consumer education on the labeling issues addressed in S. 1425.

We believe a major goal of the legislation is to simplify the nutrition label and provide information most important to the health of consumers. The inclusion of complex carbohydrates, sugar and fiber declarations for all foods covered by this Act would provide little useful information. Moreover, the link between chronic disease and these nutrients is scientifically less definitive. Unless a claim is made regarding these nutrients, we do not support their mandatory labeling.

We do not agree with the requirement in the bill that the serving size be expressed in terms of a "common household measure". This is unnecessarily restrictive and could result, in some instances, in serving size information which is not useful. Instead, it should be expressed in a common, convenient measure appropriate to the food and suitable for consumption as part of a meal. For example, a serving of chips can be determined by specifying the actual number of chips in a serving (i.e., one serving equals 16 chips). Clearly, a cup of chips, although a common household measure, is inappropriate. The chip count allows consumers to compare "like foods" and to visualize the actual serving of the snack product.

With respect to the "nutrient content" and "disease prevention claims" provisions of the bill, SFA believes that health claims and product descriptors are a viable and useful methods for manufacturers to convey information to consumers about their products. SFA supports the establishment, by a certain date, of health claim guidelines by the FDA through the federal regulatory process. We support the reasonable standardization and definition of product descriptors. In addition, care should be taken not to confuse or link product descriptors with health claims. Product descriptors provide factual content information, they do not claim health or medical benefits. Both the health claims guidelines and definitions of product descriptors would have to be supported by sound scientific bases.

The "Claims" section of the bill as currently written, would have a major detrimental effect on the development of more nutritious foods. Food producers are not going to develop more healthful products if they can't use terms to market the characteristics of the product that they've been able to improve. For example, if a company develops a product that is significantly lower in fat, calories, or cholesterol, it couldn't use product descriptors on the label unless all the nutritional components of the product were deemed not to "increase the risk of disease or health related condition which is diet related."

In effect, this means that if a manufacturer cannot develop a "perfect" nutritional product, then it cannot make any statement on the label regarding the positive nutritional value of any aspect of the product. For example, if a company makes a one-third less oil potato chip that is also cholesterol-free , it would not be permitted to describe those characteristics if the Secretary deemed the chips to be moderately high in sodium. The fact that a form of a product (normally high in fat, in this example) is available with less oil and no cholesterol is important information for the consumer to know.

Finally, SFA would like to comment on the matter of national uniformity and label standardization. Presently, state governments are asserting authority to establish food labeling requirements for FDA-regulated products that are more restrictive than the federal requirements. This authority threatens the existence of a uniform food label. To provide consumers with helpful information about the content and nutritional value of a food product, a national standard for food labeling must be established and the authority for governing the food label must lie with the FDA. This authority should mirror USDA's statutory authority for USDA-regulated products.

The Association believes that consumers and food manufacturers support the standardization of labeling laws on a national basis. SFA supports labeling standards that are national in scope and uniform in application. We oppose the continuation of the existence of state laws that threaten to disrupt the distribution of food products in interstate commerce.

The "uniformity" provisions of this bill are limited. They do not preempt all state requirements on food labeling matters now addressed in the FFDCA. Furthermore, the bill permits state enforcement of its provisions. Enforcement by State Attorneys General will lead to varying interpretations from state to state. Food manufacturers can comply with consistent application of the federal regulations by FDA, but not with conflicting, state-by-state requirements for food labeling.

Health recognizes no borders. We have a national food supply system with consumers on the West Coast eating identical, nationally-marketed foods as their counterparts on the East Coast. Congress, not the states, should decide what diet and health information should be on food marketed in interstate commerce.

The Snack Food Association supports efforts to determine what information is truly important to an informed food purchasing decision, and how best to present that information. We ask that in this process, Congress remain sensitive to the ramifications to industry in providing the desired information. As a general proposition, we urge that, before enacting any specific labeling requirements for the food industry, Congress thoroughly examine the extent of this industry's and other food manufacturers' cooperation in consumer education and in voluntary informational labeling.

We appreciate this opportunity to share our views concerning this important legislation and look forward to working together in providing information consumers view as important in making informed purchase decisions.

FOOD LABELING CHAOS: THE CASE FOR REFORM

A Report By

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* * *

July, 1989

EXECUTIVE SUMMARY

Health authorities have reached a consensus that our diet contributes heavily to the leading causes of death in this country today -- cardiovascular diseases and cancer. The Surgeon General, the National Academy of Sciences, the Department of Health and Human Services and numerous other authorities all agree that by changing our diets, we can sharply reduce our risks of these diseases which take the lives of hundreds of thousands Americans each year and cost tens of billions of dollars annually.

The changes Americans must make in their diets are clear. Health authorities advise that we consume less fat, saturated fat, cholesterol, and sodium, and that we eat more of the foods that are rich in starch and dietary fiber. *Surveys taken by FDA and others show that a majority of Americans know about much of this advice and are striving to follow it. However, FDA surveys also suggest that current food labeling practices and regulatory policies thwart efforts by consumers to actually follow this advice when choosing particular foods.*

The Problem

Most labeling problems that prevent consumers from following the advice of health authorities to modify their diets fall into three areas:

1. Lack of Useful Nutrition Information

Only about half of all food labels disclose nutrition information, and those that do so are not required to list many of the nutrients that authorities consider most critical: saturated fat, cholesterol, starch, and fiber. Furthermore, the current labeling format does not enable consumers to quickly grasp the significance of the information listed.

2. Misleading Nutrition and Health Claims

Manufacturers use nutrition and health claims on the front of food packages to attract shoppers. These claims often are based on nutritionally-obsolete regulatory standards, or are not defined by regulation at all. Major offenders include claims such as "100% vegetable oil," "high fiber," "light" and "natural," as well as claims that a food can actually help reduce the risk of specific diseases.

3. Incomplete, Unclear Ingredient Information

Contrary to what most people believe, ingredient lists are not always required to list the exact ingredients of a food. Furthermore, the quantities of major ingredients are not disclosed. In addition, the information disclosed is often provided in formats that are hard to read.

Regulatory and Legislative Failure

Over the last decade, consumer and health groups have called upon the Food and Drug Administration, the Department of Agriculture (which regulates egg, meat, and poultry product labeling) and the Bureau of Alcohol, Tobacco and Firearms (which regulates alcoholic beverage labeling) to address these problems. In some areas, the agencies have failed to keep labeling regulations up to date with nutritional findings; in others, they have promulgated regulations that are inconsistent with each other; in others still, they have completely neglected requests for reform. Recently, however, even FDA Commissioner Frank Young, M.D., has conceded that current food labels are "almost unintelligible" and that labeling policies are in drastic need of change.

During this period of regulatory neglect, Congress has failed to pass comprehensive food labeling reform legislation. Narrower labeling bills have been introduced in recent sessions of Congress and comprehensive food labeling legislation may be considered by Congress in 1989.

Recommendations

Reform in these major areas of food labeling are needed. The human and economic benefits from these reforms -- additional years of productive life and reduced medical expenses -- dwarf the implementation costs to industry and government. These recommendations thus make sense economically as well as from the standpoint of public health.

1. Mandatory Nutrition Information, Improved Format

- Require labels of all processed foods to disclose the amounts of key nutrients related to major public health problems: calories, total fat, saturated fat, cholesterol, sodium, total carbohydrate, starch, sugars, and dietary fiber.

- Appoint a broadly representative advisory committee to recommend to FDA a labeling format that will clearly highlight a food's strengths and weaknesses in these key nutrients, enabling consumers to use the information in choosing a typical daily diet.

2. Standards for Labeling Claims

- Require regulatory agencies to set standards for all nutrition and health claims.

- For health claims, require that claims be supported by a consensus of scientific opinion, that significant nutritional drawbacks be disclosed, and that the diet-disease relationship be recognized by the Public Health Service as a significant problem for the average American.

3. Improved Ingredient Labeling

- Require that all ingredients, as well as percentages of major ingredients, be listed on all foods in a format recommended by the advisory committee.*

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* This report was prepared by Charles P. Mitchell, Staff Attorney; Bruce Silverglade, Director of Legal Affairs; and Bonnie F. Liebman, Director of Nutrition.

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PART I: INTRODUCTION

Diet-related disease takes an enormous toll on our society. Last year, The Surgeon General's Report on Nutrition and Health noted that dietary factors play a "prominent role in five of the ten leading causes of death for Americans," including the top two: cardiovascular disease and cancer. Based on scientific evidence that the Surgeon General called "even more impressive than that for tobacco and health" (at the time of the Surgeon General's 1964 landmark report on smoking), his new report concludes that:

> For the two out of three adult Americans who do not smoke and do not drink excessively, one personal choice seems to influence long-term health prospects more than any other: what we eat.[1]

Expert Consensus

This impressive scientific evidence has produced a consensus among health authorities that American diets are too high in fat, saturated fat, cholesterol, sodium, and calories, and too low in complex carbohydrates, starch, and fiber. Furthermore, health authorities agree that the typical American diet increases the risks of coronary heart disease, high blood pressure, stroke, diabetes, obesity, and some forms of cancer.

Fortunately, these same authorities have also reached a consensus that Americans can cut their risks of these diseases by eating less fat, saturated fat, cholesterol, and sodium, and by consuming more of the foods that are rich in complex carbohydrates. Since 1980, the U.S. Department of Health and Human Services (HHS) and Department of Agriculture (USDA) have recommended that Americans "avoid too much" fat, saturated fat, cholesterol, sodium, and sugar and "eat foods with adequate starch and fiber," in Dietary Guidelines for Americans, the official nutritional advice of the federal government.[2] Similar recommendations have been made by leading health organizations such as the American Heart Association[3] and the American Cancer Society.[4] These recommendations have most recently been reaffirmed by the Surgeon General's Report, by the National Academy of Sciences/National Research Council's (NAS/NRC) 1988 report, Designing Foods, and by the NAS/NRC's 1989 report, Diet and Health.[5]

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[1] U.S. Department of Health and Human Services, Public Health Service, The Surgeon General's Report on Nutrition and Health (1988), "Message from the Surgeon General" and p. 1.

[2] HHS and USDA, Nutrition and Your Health: Dietary Guidelines for Americans (Home and Garden Bulletin No. 232, Second Edition, 1985).

Labeling Chaos

Unfortunately, conscientious efforts by millions of Americans to follow this advice are often stymied by inadequate disclosures and misleading claims on food labels.

- Nutrition information (usually optional under current law) appears on only about half of processed foods. Those foods that are labeled generally omit information on critical nutrients such as fiber, cholesterol, and saturated fat, and are cluttered with information about several nutrients that do not play a major role in diet-related disease.
- Popular, seductive claims such as "lite" and "natural" are used deceptively on food labels and mislead consumers as to the nutritional value of foods.
- Nutrition and ingredient information is displayed in a confusing format that does not highlight the information that public health authorities consider most important.

As a result, consumers find it difficult to shop for nutritious foods and to follow the advice of health authorities to modify their diets.

Regulatory Failure

Traditionally, the Food and Drug Administration (FDA) has had primary responsibility for regulating food labeling. However, during the 1980s, as the public health consensus on diet and disease solidified, FDA abdicated this responsibility. During this period, the agency issued only one major new regulation (sodium labeling) designed to update the nutrition label.

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[3] American Heart Association, Dietary Guidelines for Healthy American Adults: A Statement for Physicians and Health Professionals By the Nutrition Committee, American Heart Association (1988), printed in Circulation, Vol. 77, No. 3 (1988).

[4] American Cancer Society, Nutrition and Cancer: Cause and Prevention, An American Cancer Society Special Report (1984), printed in Ca-A Cancer Journal for Clinicians, Vol. 34, No. 2 (1984).

[5] Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, Diet and Health, Implications for Reducing Chronic Disease Risk (National Academy Press, 1989); Committee on Technological Options to Improve the Nutritional Attributes of Animal Products, Board on Agriculture, National Research Council, Designing Foods (National Academy Press, 1988).

Furthermore, enforcement actions against misleading nutrition claims decreased. Numerous calls by public health organizations, consumer groups, state government officials, and even some members of the food industry for enforcement action against deceptive label claims, and for regulations improving the quality of label information, have fallen upon deaf ears at FDA. From 1984 to 1988, FDA denied, ignored, or failed to act on at least eight citizens petitions calling for improvements in food labeling. In the face of this record, even Food and Drug Commissioner Frank E. Young, M.D., who in 1987 had previously indicated a lack of interest by stating that "no one has died from a food label,"[6] conceded in late 1988 that today's food label is "a relic" and that food labeling is now the "dominant issue" facing FDA, "an issue whose time has come."[7] In 1989, Commissioner Young stated that labels today are "almost unintelligible."[8]

Requests for health-oriented reforms of labeling policies at USDA, which regulates meat, poultry, and egg labeling, have faced a similar fate. For example:

- USDA requires nutrition labeling only if labeling claims are made and even then does not require all of the same information that FDA requires on nutrition labels.[9]
- USDA exempted ground beef from its policy on "lean" meat labeling in response to pressure from beef producers.[10]
- The Department adopted a standard inconsistent with the FDA's informal policy on "lite" claims.[11]

A 1988 report by the General Accounting Office (GAO) noted a number of problems and inconsistencies in USDA and FDA food labeling regulations and policies, and concluded that "[m]any of these are generic to federal food information rulemaking."[12]

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[6] "Young Announces Increased FDA Emphasis on Imported Foods," Food Chemical News (Feb. 16, 1987), p. 45.

[7] Food Chemical News (Dec. 5, 1988), pp. 2, 24.

[8] Sugarman, "Keeping the Faith: FDA Commissioner Frank Young Talks About Grapes, Glory, and God," Washington Post (Apr. 12, 1989), pp. E1, E14.

[9] USDA, Food Safety and Inspection Service, Standards and Labeling Policy Book (1986), pp. 98-99.

[10] Compare USDA, Food Safety and Inspection Service's Labeling Policy Memo 070A (1986) with its Labeling Policy Memo 070B (1987).

[11] USDA, Food Safety and Inspection Service, Labeling Policy Memo 071A (1986).

Consumer Attitudes

Surveys show that consumers are well aware of the major dietary changes that experts recommend, and are striving to follow these recommendations. According to a 1984 Roper poll, consumers look to food labels more than to any other source of nutrition information.[13] Other survey findings, however, indicate that, although the public is generally aware of expert recommendations, it cannot rely on today's food labels to make specific decisions. Consequently, consumers may understand which *nutrients* they should seek and which they should avoid, but are not so sure which *particular foods* contain desirable or undesirable amounts of these nutrients.

FDA's conclusions from a recent survey of consumers' perceptions, behavior, and knowledge about nutrition are particularly telling in suggesting priorities for labeling reform. FDA believes that:

- The public has "quite impressive" general knowledge and understanding about dietary risk factors for heart disease;
- "[T]he cognitive gains taking place in all segments of the population with respect to diet/disease relationships are providing the basis for meaningful changes in food choices, marketing strategies and government policies."
- *However, "[i]t is very possible to have a highly concerned public with respect to diet and health issues which is not very knowledgeable about detailed nutrition facts that could help them to effectively implement these concerns."*[14]

Those observations suggest that what consumers most need is labeling reforms that will allow them to put their general knowledge to work by enabling them to judge the nutritional value of particular foods.

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[12] GAO, Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, Food Marketing: Frozen Pizza Cheese -- Representative of Broader Food Labeling Issues (GAO/RCED-88-70, Mar. 1988), p. 28.

[13] Roper Organization, Roper Report 84-9 (1984).

[14] Levy, Ostrove, Guthrie, and Heimbach, Division of Consumer Studies, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Recent Trends in Beliefs About Diet/Disease Relationships: Results of the 1979-1988 FDA Health and Diet Surveys, presented at FDA/USDA Food Editor Conference (Dec. 1-2, 1988).

A Challenge for Congress

Several bills were introduced in the 100th Congress to address particular food labeling problems, but not one was enacted. One bill (H.R. 2148), to reform deceptive labeling of foods containing highly-saturated tropical vegetable oils, gained 170 cosponsors in the House of Representatives. One obstacle to passage of the bill was that key members of Congress believed that any food labeling legislation should be more comprehensive.

Thus, the time is ripe for comprehensive action. The public health community agrees that Americans need to change their diets in order to reduce their risks of diet-related disease. Americans are trying hard, but finding it difficult, to follow that advice. The challenge to legislators and regulators is to provide consumers with the information they need to follow this advice and to prevent deceptive claims that can mislead.

This report suggests how legislators and regulators should confront these challenges. It addresses three basic questions:

- What nutrition information should be required on food labels, and in what format should that information be presented?
- What needs to be done to prevent deceptive claims from appearing on the labels of foods?
- What label information about ingredients should be required to help consumers follow the advice of public health authorities?

To answer each of these questions, this report summarizes each of the major diet-related health problems, examines the current labeling regulations that make it difficult for consumers to make desired dietary changes, and outlines recommendations for reform. Lastly, it explains why the economic benefits of food labeling reform far outweigh the anticipated costs of such reform.

PART II: NUTRITION LABELING

A. NUTRITION LABELING: WHAT INFORMATION SHOULD BE REQUIRED?

The Problem

The HHS/USDA Dietary Guidelines recommends the following dietary changes:

- Avoid too much fat, saturated fat, cholesterol, sugar, and sodium, and
- Eat foods with adequate starch and fiber.[15]

The Surgeon General's Report echoes those recommendations, stating that these changes should be "issues for most people" in their diets (children under two years of age are a notable exception).[16] The National Research Council's Diet and Health specifically recommends that Americans:

- Reduce total fat to no more than 30% of calories, saturated fat to less than 10% of calories, cholesterol to 300 milligrams daily, and salt to 6 grams (2.4 grams sodium) daily.
- Increase complex carbohydrate consumption by eating five or more daily servings of fruits and vegetables and six or more daily servings of breads, cereals, and legumes.[17]

In addition, the Department of HHS's "Health Objectives for the Nation" state that by 1990:

- "70% of adults should be able to identify the major foods which are low in fat content, low in sodium content, high in calories, high in sugars, [and] good sources of fiber."
- "The labels of all packaged foods should contain useful calorie and nutrient information to enable consumers to select diets that promote and protect good health. Similar information should be displayed where non-packaged

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[15] Dietary Guidelines (see note 2), p. 5.

[16] Surgeon General's Report (see note 1), pp. 8-14.

[17] Diet and Health (see note 5), pp. 1-17 through 1-20.

foods are obtained or purchased."[18]

The Surgeon General's Report states that "labeling offers opportunities to inform people about the nutrient content of foods so as to facilitate dietary choices most conducive to health." Therefore, food manufacturers "should be encouraged to make full use of nutrition labels," stating fat, cholesterol, and sodium content (among other nutrients), and -- to the degree permitted by analytical methods -- information on saturated fats and fiber in the foods that normally contain them.[19]

FDA's current nutrition labeling regulations fall far short of meeting these recommendations. Even the food packages that have nutrition labeling are not required to list five of the very nutrients that the Dietary Guidelines, the Surgeon General's Report, or Diet and Health emphasize: saturated fat, cholesterol, sugar, starch, and fiber. Ironically, labels must list three different B-vitamins that abound in our food supply and are not linked to any significant health problems in this country.

The grocery industry predicted in 1975 that 85% of companies would use nutrition labeling "in the near future,"[20] but as of 1986, nutrition labeling appeared on foods making up only about 55% of grocery store sales of FDA-regulated processed foods, and only 43% of total sales of USDA-regulated processed meat and poultry products. The percentage of FDA-regulated foods that carried nutrition labeling rose moderately from 1978 to 1982 but was stagnant from 1982 to 1986.[21] Even giants such as Nabisco and Safeway fail to provide nutrition labeling on some of their foods.

Regulatory and Legislative Status

FDA issued nutrition labeling regulations in 1973.[22] Many public comments urged making nutrition labeling mandatory for all foods, but the agency declined this option, saying that the food industry lacked the data and analytical methods needed to determine the nutrient content of some products. Instead, FDA required nutrition labeling only when producers voluntarily add a nutrient (e.g., a vitamin or mineral) or make a nutrition claim (e.g., "low in sodium"). The agency found that such labeling was necessary to prevent deception about the food's "overall" nutritional value. FDA required the nutrition label to disclose per serving -- a size determined by the manufacturer -- the number of calories, grams of total fat, protein, and carbohydrate, and percentages of the U.S. Recommended Daily Allowances for protein, five vitamins, iron and calcium.

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[18] Office of Disease Prevention and Health Promotion, Public Health Service, HHS, The 1990 Health Objectives for the Nation: A Midcourse Review (1986), pp. 221-23.

[19] Surgeon General's Report, p. 18.

[20] Jacobson, The Complete Eater's Digest and Nutrition Scoreboard (Anchor Press Doubleday, 1985), p. 24.

[21] Division of Consumer Studies, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Status of Nutrition Labeling on Processed Foods, 1986 - Food Labeling and Packaging Survey (1986).

[22] Federal Register, Vol. 38, p. 2,125 (1973). The current regulations appear in Code of Federal Regulations, Title 21, § 101.9 (1988).

Over 16 years, few improvements have been made. Some key events include:

- A 1979 FDA/USDA policy review again found public support for mandatory nutrition labeling, but neither agency has ever proposed the necessary regulations. The agencies also claimed that their legal authority to mandate such labeling was unclear, and said that they would seek or support legislation to clarify this authority.[23] They have yet to do so.

- Only one nutrient, sodium, has been added to the required items on nutrition labels.[24] This change, effective in 1985, also allows food labels to disclose sodium content without providing any other nutrition labeling.

- In 1986, FDA proposed a cholesterol labeling rule that would define terms such as "low cholesterol" but would not require that all food labels disclose how much cholesterol is in a food.[25] The White House Office of Management and Budget has delayed final publication of this rule.

A bill introduced this year by Representative Moakley (H.R. 2051) would require fat, saturated fat, cholesterol, and sodium disclosure on labels of all foods that contain any fat, cholesterol, or sodium. Representative Neal Smith has introduced a bill (H.R. 1712) to require sodium and potassium disclosure on all foods containing more than 35 milligrams sodium per serving.

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[23] Federal Register, Vol. 44, pp. 75,990, 76,001 (1979).

[24] Federal Register, Vol. 49, p. 15,510 (1984). The regulations appear in the Code of Federal Regulations, Title 21, §§ 101.9(c)(8)(i), 101.13, and 105.69 (1988).

[25] Federal Register, Vol. 51, p. 42,584 (1986).

Recommended Reform

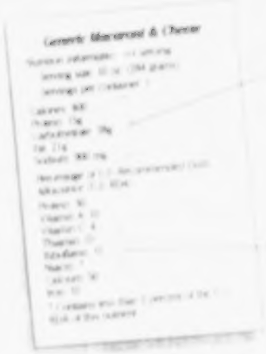
- Require nutrition information on all food labels, whether regulated by FDA or by USDA.

- Modify the contents of the nutrition label to reflect advice in the Dietary Guidelines, the Surgeon General's Report, and Diet and Health, by adding saturated fat, cholesterol, sugar, starch, and fiber disclosures, and by rescinding requirements for disclosure of B-vitamins.

B. NUTRITION LABELING FORMAT

The Problem

When nutrition information is provided, it is not labeled prominently, clearly, and understandably. Typically, it is listed in small print on the back or side label. The label seems designed for nutrition researchers or government inspectors, instead of busy shoppers who need to grasp key nutritional features at a glance. Information about fat, carbohydrates, and sodium is expressed only in grams or milligrams, which are difficult for consumers to interpret, especially considering that the U.S. does not use the metric system. Many people cannot tell whether these quantities represent desirable or undesirable levels of the nutrient in question.



Generic Macaroni & Cheese

NOT TOO HELPFUL: *Most people don't know whether 21 grams of fat or 900 mg. of sodium is a little or a lot. A simple term like "High," "Low," or "Medium" would make things much clearer.*

LESS IMPORTANT INFORMATION: *These B-vitamin deficiencies are no longer a serious health threat. In the interest of economy and simplicity, eliminate thiamin, riboflavin, and niacin.*

Current nutrition labels can be confusing.

Regulatory Status

In their 1979 labeling policy review, FDA and USDA noted these and other criticisms, but felt that consensus for specific changes was lacking.[28] FDA initiated research and set up a task force to formulate options for reform. Congress intervened in

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[28] Federal Register, Vol. 44, p. 76001 (1979).

1981 by instructing FDA in a report accompanying the agency's fiscal year 1982 appropriations bill to conduct a cost-benefit analysis before promulgating any changes in labeling regulations. Funding for the effort was ultimately eliminated by the agency in 1983 and FDA abandoned the effort. The role foreseen for USDA in 1979 was to support FDA's research effort. With the demise of FDA's project, USDA's activities in this area ceased, too.

Recommended Reforms

- The nutrition label should highlight information about the nutrients that are emphasized by the Dietary Guidelines, the Surgeon General's Report, and Diet and Health, making it easier for consumers to follow the experts' advice. The label should be designed so that people can readily see the nutrition information, understand it, and relate it to their total diets.

- An advisory committee representing health professionals, consumers, industry, and federal health agencies should conduct research and consumer surveys, then recommend to FDA and USDA how the required nutrition information should be improved.

- The *front label* could contain a synopsis of information on a few key nutrients (e.g., fat, sodium, fiber, and calories) perhaps using traffic light color-coded symbols -- red for high fat, green for low sodium, etc.

- The more extensive *side or back label* could state whether the numbers and percentages listed represent high, medium, or low levels of each nutrient listed, and display optional disclosures of vitamins and minerals separately from mandatory information. Diagrams might be used to illustrate the portions of a food's total calories that come from fat, saturated fat, carbohydrate, and protein.

Further, in a survey of consumer attitudes conducted for the Food Marketing Institute in January of this year, 96 percent of the shoppers interviewed stated that nutrition is a somewhat important or very important factor when they select foods. Of those who showed concern about the nutritional content of the foods they eat, the top causes of their concern were cholesterol, fats, and salt, in that order.

Yet, even as we are being told to be more careful about what we eat, it seems we have less ability to do so. As consumption of highly processed foods has increased, consumers have less control over what nutrients are added to our foods. The typical supermarket is a nutritional minefield, offering nearly 25,000 food items with fancy packaging and conflicting messages.

This glut of new products and advertising at the market have only left the consumer confused and frustrated. The same FMI survey I cited earlier reported nearly half of those surveyed (42 percent) responded that labels did not provide all the information they needed.

The food label can provide consumers with critical nutrition information at the point of purchase. In his report, the Surgeon General stated, "Food labeling offers opportunities to inform people about the nutrient content of foods so as to facilitate dietary choices most conducive to health. Food manufacturers should be encouraged to make full use of nutrition labels."

Yet food labeling in the United States today is worse than an embarrassment: it is a hazard to health. Nutrition labels mostly provide confusing and misdirected information. Basically unchanged since 1973, nutrition labeling is voluntary except for products that claim a nutritional benefit or have been fortified.

This federal voluntary system simply has not worked. Today less than 55% of food products regulated by the Food and Drug Administration have some form of nutrition labeling, and in no case is the type of fat or amount of cholesterol required to be listed.

Public Voice supports S.1425, which would change this situation by extending mandatory nutrition labeling to most foods regulated by FDA and by focusing the label on those nutrients that are directly related to the most serious American health concerns. These reforms alone will go a long way toward giving consumers the information they need to choose healthy diets.

Yet S.1425 goes beyond a simple requirement of nutrition information on processed food labels in several important ways. Public Voice is pleased to note that, in addition to packaged foods, this bill also provides for nutrition information for fresh fruit and vegetables. While it has been argued that fresh produce cannot be individually labeled as can other food products, it is possible to provide consumers with nutrition information for this most healthful section of the market by tagging, or placing signs at the separate fruit and vegetable bins.

In addition, S.1425 deals with an area where consumer confusion abounds. In today's supermarket, those nutrition labels that do exist are often impossible to read or make unsubstantiated or deceptive claims. Manufacturers often voluntarily add statements - so-called health claims - on the front label of their product proclaiming the value of their product in reducing the risk of a particular disease. Some products bear nutrient claims in bold lettering proclaiming, for example, that the product is "cholesterol-free" or is "low sodium." Too often, such claims mislead the consumer because they are false, because they use terms for which no regulatory standards exist, or because they omit information that is critical to evaluating these claims.

S.1425 addresses this problem by providing for strict regulation of such nutrient and health claims. Claims must be authorized by the Secretary of HHS and based upon a scientific consensus among experts qualified by scientific training and experience to evaluate such claims. Definitions of such comparative claims as low, lite, medium, reduced, would have to be defined by FDA.

Public Voice does suggest a provision be added to this legislation requiring the federal government to sponsor a widespread consumer education program to explain to consumers how to use the new labels required by S.1425. Consumers need to understand more clearly how to incorporate the information provided by the label into plans for well-balanced diets. Target programs for low-income consumers with tight budget constraints would be especially helpful.

Nutrition labeling can be insurance for the American public. Prevention and control of major diseases depend on individuals making personal choices and changing their eating behavior with better selections of healthful foods. This goal requires adequate nutritional information on food products.

S.1425 gives consumers far more control over their diets and, therefore, their health. Public Voice supports this vital public health measure and we respectfully urge this Committee to give S.1425 its support also.

Thank you.

Senator METZENBAUM. Our next witness is Bruce A. Silverglade, director of legal affairs at the Center for Science in the Public Interest.

Mr. Silverglade.

Mr. SILVERGLADE. Good morning.

I'd like to thank you for this opportunity to testify. On behalf of our 175,000 members, we want to thank you for introducing this legislation. We look forward to working with you toward its prompt enactment.

Food labeling reform has been on the consumer agenda for many years, but what has been made absolutely clear today is that food labeling reform is now a public health priority. The grounds for food labeling reform are set out fully in our report entitled, "Food Labeling Chaos: The Case for Reform" and I would request that it be incorporated into the record of this hearing.

I would like to bring up one point from our report. Surveys taken by the FDA show that most Americans are aware of the risks of an improper diet and are trying to make the dietary modifications that health experts recommend. Unfortunately, other surveys by FDA confirm that the fight to reduce diet-related disease comes to an abrupt halt in the aisles of the supermarket where the consumer is confronted by a minefield of misleading nutrition claims.

One of the most important parts of S. 1425 deals with these misleading nutrition and health claims. It is important, because the benefits of complete nutrition labeling will never be realized fully unless the FDA is required to strictly regulate these nutrition content and disease prevention messages.

These claims, slapped boldly across the fronts of food labels, are often the first source of nutrition information that busy shoppers notice. A food that is prominently labeled as "light", "high fiber" or "reduces cholesterol", may appear to be healthful, notwithstanding the nutrition content disclosures found in small print on the backs of food labels.

I have brought a few examples here today.

We have Safeway oat bran doughnuts. Safeway, of course, is the largest grocery retailer in the country. Earlier this summer they came out with new oat bran doughnuts. "Reduces cholesterol", it says right here on the package.

Senator HATCH. Somebody has eaten one of those—or is that a defective package? [Laughter.]

Mr. SILVERGLADE. For food safety reasons, I should have thrown them all out. They have been around for a while.

Each doughnut has 10 grams of fat per serving, although it is labeled as "reduces cholesterol".

Misleading nutrition claims extend to the brand name. Therefore, it is very important that your legislation be clarified to indicate that the restrictions about the nutrition claims extend to nutrition claims implied within the brand name of the food.

For example, let's examine Weight Watchers. One would think if you were on a diet, you could eat Weight Watchers. In fact, this product, and many Weight Watchers products, provide more than 45 percent of their calories from fat. Now, as we know, the guideline that health authorities recommend is no more than 30 percent of our calories from fat.

Weight Watchers was asked about this inconsistency. In a recent issue of Ad Week's *Marketing Week* magazine, they stated that the 30 percent of fat guidelines applies to the total diet, not to individual foods. As *Marketing Week* concludes, that means that consumers should expect their diet to compensate for eating Weight Watchers.

I'd like to spend my remaining time talking about the relationship between the States and the Federal Government in the area of food labeling. Section 4 of your bill allows the attorneys general across the country to enforce the Federal law. This is essential, because as FDA has conceded here today, it lacks the resources to exercise the agency's existing authority to prevent misleading labeling. As a result, actions against deceptive labeling are few and far between. Fortunately, State attorneys general have stepped in across this country and have protected consumers from problems in this area.

Section 6 of your bill is entitled "National Uniform Nutrition Labeling." This provision does more than its title implies. Section 6 not only preempts States from departing from the nutrition labeling requirements of section 2 of your bill. It also prohibits State attorneys general, State health departments, State agriculture departments and other State and local agencies from taking any action inconsistent with the legislation, including those sections dealing with nutrition and disease prevention claims. Thus, we are not merely talking about a national uniform nutrition label, but also about preemption of numerous State and local enforcement officials who have been relied on so often during the past 10 years to take action against misleading claims.

Therefore, State preemption of any type must be approached very cautiously. In this case, preemption of States in the area of regulating misleading label claims, should not even be considered, unless Federal law sets standards that are as strong or stronger than the standards currently being employed by State officials and authorizes State and local officials to enforce Federal law. Your bill currently achieves both of these goals. But we are going to look out for attempts to weaken the legislation on this point.

Major food industry trade associations claim that they support mandatory nutrition labeling. However, what they have actually been doing over the last few months is, under the guise of national uniformity, been seeking legislation that would preempt all State laws governing food labeling, not just those concerning nutrition labeling matters and health claims that your bill addresses. Under this approach, nutrition labeling reform would come only at the cost of nullifying State laws on numerous other matters for which your legislation establishes no national framework. We certainly object to that legislation.

I'd like to thank you, and I'd be pleased to answer any questions.

Senator METZENBAUM. Thank you very much, Mr. Silverglade. I am happy to have your support in connection with our bill, and I look forward to continuing to work with you.

[The prepared statement of Mr. Silverglade follows:]

PREPARED STATEMENT OF BRUCE A. SILVERGLADE

Good morning. I am Bruce Silverglade, Legal Director of the Center for Science in the Public Interest (CSPI). We wish to thank you Mr. Chairman for this opportunity to testify in support of S. 1425, the Nutrition Labeling and Education Act of 1989 and wish to congratulate Senators Metzenbaum and Chafee for introducing this much needed legislation.

CSPI is a national non-profit consumer advocacy organization. We are supported by more than 175,000 dues paying members. We have been concerned about improving the quality of food labeling since we were formed in 1971.

Food labeling reform has been on the consumer agenda for many years. Yet, as recognized recently in both the Journal of the American Medical Association and The New England Journal of Medicine, food labeling reform has become a priority of the medical and health communities as well.

The grounds for food labeling reform are set out fully in our report entitled Food Labeling Chaos: The Case for Reform, which I would request, along with the aforementioned articles, be incorporated into the record at this time. As detailed in our report, diet related diseases claim hundreds of thousands of lives each year. Surveys taken by Food and Drug Administration (FDA) show that most Americans are aware of the risks of an improper diet, and are trying to make the dietary modifications that health experts recommend.

Unfortunately, FDA surveys also confirm that the fight to reduce diet related disease often comes to an abrupt halt in the aisles of the supermarket, where consumers are confronted by a mine field of misleading labeling claims and a paucity of meaningful nutrition information.

S. 1425 requires the FDA to take important steps that will help correct these problems. The bill requires FDA regulated food labels to disclose the content of key nutrients, in a format that consumers can readily understand and use. It also requires FDA to set standard definitions for nutrient content claims and to ensure that disease prevention claims have a sound scientific basis and do not misleadingly highlight single nutritional attributes of foods.

S. 1425 does not address all of the concerns discussed in our report. For example, the bill does not cover meat and poultry products. Nor does it address the matter of standards of identity that sometimes mandate unhealthful amounts of fat or other nutrients in certain foods. The bill however, does take major steps towards making the food label a tool that the American public can use to make the dietary changes that they have been advised to make and are trying to attain. Accordingly, we enthusiastically support this measure.

We are pleased to provide the following specific comments on S. 1425:

Section 2 -- Nutrition Labeling:

(a) Labeling requirements - We support the requirements in this section of S. 1425. The bill requires information about the precise nutritional components that health authorities agree consumers should consider when choosing foods. This label information will allow consumers to follow the advice of health authorities to reduce consumption of fat, saturated fat, cholesterol, sodium and sugar and to increase consumption of foods rich in starch and fiber.

The Committee however should consider requiring the disclosure of the percentage of calories from fat and saturated fat as opposed to the number of calories from these nutrients. Consumers are increasingly aware of the advice of health authorities to consume no more than 30 percent of calories from fat. S. 1425 however does not provide the consumer with the information that he or she needs to readily adhere to this guideline.

(b) Regulations - The National Academy of Sciences report on recommended labeling formats is an essential part of this legislation. Nutrition information is of little use unless it is disclosed in a manner that will allow most consumers to readily observe it, comprehend it, and relate it to their total daily diets. To ensure that this objective is satisfied, we urge the Committee to see to it that the NAS bases its recommendations on appropriate consumer studies designed to evaluate the effectiveness of a variety of possible label formats.

Section 3. Claims:

This section of S. 1425 is of key importance. The benefits of complete nutrition labeling will never be realized fully unless the FDA is required to adequately regulate nutrient content and disease prevention claims. These claims, slapped boldly across front labels, are often the first source of nutrition information that busy shoppers notice. A food prominently labeled as "Light," "High fiber," or "Reduces Cholesterol" may appear to be healthful notwithstanding the nutrient content disclosures found in smaller print on the backs of food labels.

Presently, all too many products in the grocery store contain nutrient content and disease prevention claims that are based on outdated, inconsistent, or inadequately enforced regulatory standards. Sometimes, no regulatory standard at all exists to control such label claims. As a result, misleading claims have proliferated. These claims aren't just deceptive, they're dangerous!

S. 1425 helps put an end to the deception by prohibiting such label statements until the FDA issues regulations governing the meaning and use of these claims. The bill requires the FDA to base regulations on sound nutritional criteria to ensure that foods that make claims are in fact as healthful as they purport to be, and do not have any serious nutritional drawbacks. Express disease prevention promises could not be made if there was significant disagreement about the claim within the scientific community. This requirement will prevent food manufacturers from basing these claims on inadequate or tentative data.

We hope the Committee will strengthen S. 1425's provisions governing misleading claims in two ways. First, the Committee should clarify that the types of label statements covered by the bill's requirements include "Organic," "Natural," and similar claims. These claims implicitly characterize the nutritional value of the food without mentioning any nutrient by name.

Second, the Committee should require that disease prevention messages on food labels be based on the totality of the scientific evidence before the FDA. This bill recognizes that these claims are uniquely powerful in persuading consumers. By requiring that claims be based on the totality of scientific evidence before the FDA, this bill can help ensure that such claims will be consistent with mainstream scientific opinion.

Section 4. State Enforcement:

This provision is essential to ensure that the reforms in the S. 1425 will have practical effect. FDA has conceded that it lacks the resources to exercise the agency's existing authority to prevent misleading labeling. Fortunately, state attorneys general have supplemented FDA's efforts by acting under parallel provisions of their state laws. However, they currently lack legal authority to directly enforce the federal law in federal court. As a result, such actions have legal effect only within the states in which they are brought. This bill would help ensure that these actions have uniform nationwide effect.

Section 6. National Uniform Nutrition Labeling:

This provision does more than its title implies. It not only preempts states from departing from the nutrition labeling requirements in Section 2 of this bill, it also prohibits state attorneys general, state health departments, state agriculture departments, and other state and local agencies from taking any legal action inconsistent with Section 3 of this bill which governs nutrition and disease prevention claims. Thus, we are not really talking just about a national, uniform nutrition label, but also about the preemption of numerous state and local enforcement officials who have been increasingly relied on in recent years to take action in this area.

State preemption of any type must be approached cautiously. In this case, preemption of states in the area of regulating misleading label claims should not even be considered unless the federal law:

1. Sets standards governing misleading label claims that are as strong, or stronger than the standards currently being employed by state officials, and

2. Authorizes state and local officials to enforce the federal law.

If either of these two preconditions cannot be met, state preemption in the area of nutrition and disease prevention claims should not even be considered.

Moreover, it is also clear that this bill should not preempt states in any areas of food regulation beyond the matters addressed in S. 1425. We are pleased that several major members of the food industry have indicated their support for this, or portions of this bill, without demanding further preemption of state laws governing food labeling matters beyond the scope of S. 1425.

Unfortunately, some of the major trade associations claiming to represent the industry on this issue are still attempting to use this legislation as a vehicle to gain preemption of practically all state laws and regulations governing the food label. Under the guise of so-called "National Uniformity," these associations are supporting S. 1505, legislation introduced by Senator Hatch, that would preempt all state laws concerning food labeling, not just laws concerning the nutrition labeling matters that S. 1425 addresses. Under this approach, nutrition labeling reform would come only at the cost of nullifying state laws on numerous matters for which the federal bill establishes no national framework. For example, S. 1505 would preempt:

* A Maine law requiring disclosure of the use of post-harvest pesticides on produce;

* A New York law on the labeling of kosher foods;

* A Massachusetts law requiring unit pricing of foods;

* A Washington law requiring freshness dating of foods; and

* A California law requiring food companies who use lead soldered food cans to warn the public that the product may contain a substance known to the state to be a reproductive toxin.

These laws have nothing to do with reducing cholesterol or cutting back on the fat in our diet. Thus it would be ludicrous to preempt such laws in a bill that does not even purport to address such matters.

Since S. 1425 was originally introduced, The Grocery Manufacturers of American (GMA) and the National Food Processors Association (NFPA) claimed that they reversed their traditional opposition to nutrition labeling reform and that they now support legislation that would achieve this goal. Yet it has become clear that these associations are more interested in using the legislative process to gain preemption of unrelated state laws than in seriously working on a nutrition labeling reform bill. Thus, we can only conclude that GMA's and NFPA's pronouncements are less than sincere. However, we again renew our invitation to sit down with these organizations and work seriously on nutrition labeling reform legislation if that is in fact what they are interested in achieving.

We wish to thank the Committee for this opportunity to testify and would be pleased to answer any questions.

Senator **METZENBAUM.** Dr. Nancy Wellman, president of the American Dietetic Association.

Dr. **WELLMAN.** Good morning, Chairman Metzenbaum and Senator Hatch. I am representing 58,000 professional members of our association, and that includes over 90 percent of all registered dieticians in the entire country. I am also a faculty member in the Department of Dietetics and Nutrition at Florida International University in Miami. I speak in strong support of the Nutrition Labeling and Education Act.

Dieticians, as you know, are food and nutrition experts. In our everyday work, we use food labels to try to help people translate the sometimes confusing science of nutrition into the art of choosing healthier foods.

Today, consumer interest is sky high in nutrition. Yet, even intelligent, well-motivated people are confused and are actually being misled by today's labels, their health claims, and ads about foods. Just the other day, my tennis partner asked apologetically if she could ask a dumb question. She wondered whether cholesterol and fat are the same thing. She also was surprised when the bananas that she brought home from the supermarket had a "no cholesterol" sticker on them.

While people are trying to avoid excesses in foods such as calories, sodium, salt, fats, oils, cholesterol and preservatives, today's labeling regulations are still focusing on preventing deficiency diseases which are primarily nonexistent in this country. Americans want to eat healthier to decrease their risks of certain devastating chronic diseases such as cancer, heart disease, diabetes, obesity, osteoporosis, kidney disease and dental caries.

Therefore, our association supports mandatory, uniform labeling of all packaged and processed foods.

Although S. 1425 addresses only FDA-regulated foods, we believe that there is a need for one uniform set of labeling regulations for both FDA and USDA. We also feel that it is time for stronger FTC regulations on advertising of nutrition and health claims for the benefit of the American public.

Changes to the labeling regulations have been proceeding piecemeal, and it is time to completely overhaul the system. The diet and health report by the National Academy of Sciences gives us a fine foundation for this overhaul.

We believe that nutrition information on food labels as addressed in S. 1425 and in food advertising governed by the Federal Trade Commission can improve the food literacy of Americans as well as their nutritional status.

We are realistic, and we know that there is a limit to the amount of information that can be placed on a label. Some micro nutrient information required today can be replaced with more useful information. Key nutrients today we believe are total calories, protein, total fat, saturated fat, cholesterol, complex carbohydrates, fiber, sodium and calcium.

Also, we support the S. 1425 provision that the Secretary of Health and Human Services can have the flexibility to add to or subtract from the content of nutrition information on labels depending on newer scientific information.

ADA supports expression of serving sizes in common household measures and in standardized portions for easier comparisons. Our written testimony gives illustrations regarding the need for uniform standards for serving sizes.

The label should give nutrition information for the food as consumed, not necessarily just as packaged. Single-serving containers should also carry information regarding a standard portion size to make comparisons easier.

We do not believe that the percent of calories from fat is necessary and useful information because it would require the consumer to make sequential computations over the day. As consumers aim for an average fat intake of less than 30 percent of their calories from fat, they could easily misinterpret any food with greater than 30 percent fat calories as being not good or not healthy.

Health messages must relate food to the total diet over time. Health claims should be based upon the prioritized recommendations as stated in the diet and health report because today people are distorting their diets in very, very strange ways as they are encouraged to become preoccupied with specific and single-disease entities. S. 1425 appropriately addresses our concerns on this matter.

We certainly need definitions for those descriptors on the labels. We need to define "high", "reduced", "low", "light", "lean", "natural" and "organic".

The movement in the sodium and calorie and cholesterol descriptors is fairly good, and we need definitions for descriptors for all the nutrients in your bill.

Nutrient content claims should not ignore negative aspects of a food. The "no cholesterol" claim should not be allowed unless the food is low in fat and saturated fat.

Unfortunately, S. 1425 does not link health and nutrition claims with positive and negative attributes of foods. We suggest that the word "each" be substituted for "any" so that nutrients for which there is no significant scientific disagreement about their common or group relationship to a diet and disease can be linked together. An example would be grouping total fat, saturated fat, cholesterol and sodium because of their relationship to heart disease.

Many of today's 300 standards of identities are passe. Standards of identities should be completely revamped. Flexibility would encourage manufacturers to reformulate and perhaps develop new, hopefully healthier, food products.

ADA strongly supports the consumer education provision in S. 1425. We definitely need to speak as one voice in an integrated manner to encourage consumers to use the information that we are going to provide in a better fashion on food labels.

In closing, again I urge that we all work together. I do believe for our association that congressional action is necessary for food labeling reform. S. 1425 provides a very strong framework, and we hope legislation will be enacted into law this year. Thank you.

Senator METZENBAUM. Thank you very much, Dr. Wellman. We very much appreciate the support of the American Dietetic Association and your testimony. We appreciate the excellent suggestions that you have made as to how we might improve the bill, and certainly will take a look at those subjects.

[The prepared statement of Dr. Wellman follows:]

PREPARED STATEMENT OF NANCY S. WELLMAN

Introduction

Good morning, Chairman Kennedy and members of the Committee on Labor and Human Resources.

I am Nancy Wellman, PhD, RD, President of The American Dietetic Association (ADA). The American Dietetic Association promotes optimal health and nutritional status of the population through quality dietetic practice, education, and research. On behalf of the more than 58,000 ADA members nationwide, thank you for the opportunity to address you today in support of the *Nutrition Labeling and Education Act of 1989*, S 1425.

Members of The American Dietetic Association have unique professional skills to help the public translate the science of nutrition into the art of healthy food choices. Dietitians know that good diets promote health and prevent disease. A sound nutrition labeling system will help Americans make healthier food choices if it addresses current public health problems.

Consumer interest in nutrition has risen dramatically. Yet, transforming nutrition information into appropriate actions is difficult even for intelligent and well-motivated individuals. Current labeling information, health claims, and advertising messages about food are confusing and misleading the public.

ADA believes that it is important for the public to make informed food choices based on consistent and accurate nutrition information on food labels. ADA supports the need to improve current labeling information and is committed to participate in this important effort through support of S 1425.

Consumer concerns

A variety of federal and private surveys show that consumers use food labeling information extensively. While most consumers read food labels, a much lower level of use was found when consumers were asked to recall what label information they used.

Several surveys show that more consumers are using labeling information to avoid excessive calories, salt/sodium, fats/oils, cholesterol, and preservatives. This shift from US Recommended Daily Allowance (US RDA) information (prevention of nutrient deficiencies) to current public health concerns results from a better understanding of the link between diet and health. Chronic diseases and conditions with diet-related factors that encourage label use include: cancer, dental caries, diabetes, heart disease, hypertension, kidney disease, obesity, and osteoporosis.

Nutrition labeling legislation and regulation

ADA, along with the food industry, and many professional and consumer organizations concerned with promoting the health and nutritional status of the population, concur with Congress in recognizing the need to revise current labeling regulations. ADA supports mandatory, uniform labeling of all packaged and processed food products. An estimated 45 to 60 percent of packaged and processed foods currently carry voluntary nutrition information on their labels. While some segments of the food industry oppose mandatory food labeling, industry's overriding concern is the proliferation of individual state laws, which may conflict with one another and/or with federal statutes.

Although S 1425 addresses only Food and Drug Administration (FDA) regulated foods, ADA supports the need for one uniform set of food labeling regulations by both FDA and the US Department of Agriculture (USDA). Stronger Federal Trade Commission (FTC) regulations on the advertising of nutrition and health aspects of food products are also needed.

In the regulatory arena, FDA, USDA, and FTC undertook a reevaluation in 1978 of their respective labeling practices by holding regional public hearings and sponsoring a Consumer Food Survey. ADA has commented on the need to revise the content and format of nutrition labeling in the past (1). Since then, changes to labeling regulations have been proceeding in a piecemeal fashion. It is time to completely overhaul the current system.

Label content and format

Ingredient information and nutrient content on food labels are two ways of providing nutrition information to the public. The American Dietetic Association sees the need to provide nutrition information within the context of a broader health education policy. ADA believes that nutrition information on food labels, as addressed in S 1425, and in food advertising, governed by the FTC, can improve the food literacy of Americans (2).

We recognize there is a limit to the amount of useful information that can be placed on the package label. Some micronutrient information required by current nutrition labeling regulations is extraneous and could be replaced with more useful information.

ADA agrees with statements in the National Academy of Sciences report, *Diet and Health Implications for Reducing Chronic Disease Risk*, and the *Surgeon General's Report on Nutrition and Health* that nutritional components of concern for most Americans are total calories, protein, total fat, saturated fat, cholesterol, complex carbohydrates, fiber, sodium, and calcium (3, 4). ADA also supports the requirements in S 1425 that provide the Secretary of Health and Human Services the flexibility to add to or subtract from the content of nutrition information labeling based on current science through regulation revision.

ADA supports provisions in S 1425 that require FDA to express serving sizes in common household measures appropriate to the food and to food consumption patterns of Americans (such as 1/2 cup or 2 Tablespoons) or in counts (such as 2 pineapple rings). The serving size should be a standardized portion for similar foods for easier comparisons.

For example, we currently see jelly and jam produced by the same manufacturer that list 1 teaspoon or 2 teaspoons as the serving size. Consumers may think one has twice the calories, when an equal portion is about the same.

Single serving containers for foods such as yogurt, boxed juices or cereal, and frozen foods should provide calories and nutrients per container. It is not reasonable to assume 1.4 servings from a single-serve container of juice with one straw. Such packages could carry additional labeling on the standard portion size for comparison purposes. This would be particularly useful for products such as yogurt that come in 3, 4, 6, and 8 ounce single serving containers.

Another example is tuna fish packed in oil or water. Both carry labels stating that a 6.5 ounce can equals 3.3 servings (2 ounces per serving). We question if a typical serving is only 2 ounces and wonder who gets the 0.3 serving. Also, the stated serving size for tuna includes the liquid--oil or water. Most people drain the oil or water from their tuna, many also rinse it, thus reducing the fat and/or sodium levels. A reliable, non-misleading nutrition labeling system should reflect nutrition information as consumed, not necessarily just as packaged.

When a packaged food requires preparation, including the addition of other ingredients, the product should provide nutritional information based on the edible portion. For example, boxed macaroni and cheese should be labeled to include the milk and margarine required by the directions to prepare the finished product. In other words, the nutrient levels at the time of food consumption (as the food is typically served) should be listed. If consumers are concerned about particular nutrients being too high, they can then substitute or omit ingredients to meet their particular needs.

There has been much discussion over the expression of percentage of calories from fat. We believe that percent of calories from fat, or from other food components, does not provide the public with useful information to determine overall fat contribution to one's daily diet. Labeling foods with the percentage of calories from fats is difficult for consumers to integrate into a total day's diet. It would require sequential computations over the day. The percentages often lead to erroneous conclusions about the nutritional value of a particular food.

Expressing labeling information as total fat calories, saturated fat calories, and unsaturated fat calories per serving, as well as grams of fat, saturated fat, and unsaturated fat, will better help the public implement current recommendations into their daily diet.

Health and Nutrient Content Claims

Health and nutrient content claims are two very important issues related to food labeling. ADA believes that health and nutrient claims on food labels may provide the consumer with useful information if claims are substantiated and related to current public health problems. Less than responsible health claims on labels and in advertising hype is leading to an inevitable consumer backlash and distrust of credible scientific research about diet and health.

Therefore, health-related messages must convey a food's relationship to a total diet over time, and reflect prudent dietary recommendations embodied in the National Academy of Sciences report *Diet and Health: Implications for Reducing Chronic Disease Risk*, and the *Surgeon General's Report on Nutrition and Health* (3, 4, 5). Health claims labeling should assist the public to integrate specific food products into a well-balanced diet, and avoid distortion of dietary habits and preoccupation with specific diseases. The public must be provided with truthful, non-misleading information that is based upon a preponderance of scientific evidence. Although ADA agrees, in principle, with the FDA draft final rule proposed in August 1988, the original proposal did not provide consumers with these aforementioned assurances and believes that the provisions of S 1425 will more appropriately address these concerns (6).

For nutrient content claims on food products, ADA urges the FDA to establish regulations to define such terms as "high-," "reduced-," "low-," "no-," "lite," "light," "lean," "natural," "organic," and others as needed. As FDA has established definitions through regulation to describe sodium and caloric content of foods, and has proposed regulations for cholesterol, definitions are needed for, at a minimum, the nutrients required by S 1425 to be included on the nutrition information label. Other nutrients of significant public health concern in addition to those required should have nutrient content definitions developed through regulations as needed.

Nutrient content claims must also take into account the positive and negative aspects of foods in order to not mislead and/or focus consumers on singular food characteristics. As an example, for a food to be able to make a "no-cholesterol" claim, the food should also be required by regulation to be low in total fat and saturated fat. Another example is, if a food does not naturally contain cholesterol (e.g., fruits & vegetables, vegetable oils, peanut butter), or any other nutrient as an inherent component, those foods should not be allowed to have content claims regarding those nutrients on their labels. It is important that consumers understand that all foods consumed in the total daily diet affect their health.

As written, S 1425 does not link health and nutrient claims with positive and negative health attributes of foods. We request that the word "each" be substituted for "any," so that nutrients, for which there is no significant scientific disagreement about their grouped relationship to diet and disease, can be linked toghether. An example would be grouping total fat, saturated fat, cholesterol, and sodium because of their relationship to heart disease.

Ingredient labeling

ADA believes disclosure of ingredients is important. Expression of ingredients as a percentage of product is not needed if there is full disclosure of important nutrients on the nutrition information label.

Currently, ingredients are listed in descending order of predominance by weight. FDA should continue this requirement and also consider listing ingredients in a fashion appropriate to the edible product. As an example, it may be more appropriate for dry flavored gelatin mix to list ingredients in descending order of predominance by volume rather than weight since the final product is primarily water. Other examples would be concentrated juices, salad dressings, and other liquid mixtures.

"And/or" labeling of fats and oils has recently received much attention by FDA and Congress. ADA believes that full disclosure of fat content and composition (total fat, saturated fat, unsaturated fat) in the nutrition information label will provide consumers with the information necessary to make wiser choices related to fat intake in their daily diet. With strong nutrition information labeling regulations, "and/or" labeling could continue, as mixtures of fats and oils allow food manufacturers the flexibility to respond to fluctuations in price and availability.

Current ingredient labeling regulations allows grouping of specific names of several categories of ingredients in lieu of complete ingredient labeling, such as "spices," "natural or artificial flavors," and "natural or artificial colors." This practice could be continued as long as specific ingredients do not pose a major public health problem to a significant segment of the American public.

ADA encourages FDA to continue to require labeling of ingredients that are strong allergens to a significant population segment, as with sulfite labeling regulations. We do not support further categorical groupings of ingredients.

Food standards

Over the years, some 300 food standards have been adopted. These standards of identity were developed to protect consumers against adulteration or unnecessary fortification of foods. ADA recommends that current standards of identity related to food labeling requirements and their composition be completely revamped.

The American public, increasingly concerned about the relation of diet to health, is demanding healthier food products. Food standards should be flexible enough to allow for product variability within the standard to promote optimal health. This flexibility is qualified by the need to maintain the philosophy of consumer protection against adulteration or unnecessary fortification.

Consumer education on food labels

ADA strongly supports the consumer education provision in S 1425. There is a great need to educate consumers about the availability and use of nutrition information on food labels and the importance of maintaining a nutritious diet to promote personal health.

We support this provision and encourage professional and consumer organizations, the food industry, and government to speak with one voice to improve consumer use and understanding of food labeling information.

Closing

Based on current reports and fragmented federal efforts over the last several years, The American Dietetic Association, along with government, food industry, professional and consumer organizations, and the public must work together to improve regulations for nutrition information and health and nutrient content claims on food labels. ADA is prepared to work toward comprehensive, coordinated labeling reform and to offer the expertise of our members to government bodies and other organizations to develop nutrition labeling regulations that will promote informed food choices by the American public. This includes future discussions of USDA labeling policies and FTC regulations for food advertising.

While the FDA is currently reviewing nutrition labeling, health and nutrient content claims, and label format, ADA believes that Congressional action is necessary to achieve food labeling reform in a timely manner. S 1425 provides the strong framework to convey nutrition information on food labels. It is our hope that the legislation will be enacted into law this year.

I thank the Committee on Labor and Human Resources for the opportunity to express the views of The American Dietetic Association on the *Nutrition Labeling and Education Act of 1989*.

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Senator **Metzenbaum**. With respect to the broad-based issues of including meat and poultry as well, as in the legislation, there is no secret about the fact that that comes within the jurisdiction of the Agriculture committee. We are working with them and are hopeful that they will see fit to proceed in that area. With respect to the FTC getting jurisdiction, I can only say to you we're going to have one hell of a time getting it through this committee—let alone through the Congress—without grabbing on the jurisdiction of the FTC and the Agriculture Department. However, we appreciate what you are saying, and we think it would make a lot of sense.

Now, I suppose for most Americans, the term "light" on a package means fewer calories. But I have here a jar of Coffeemate Light that says it is light because it has 50 percent less fat. However, on the label of regular Coffeemate, it lists the exact same fat content. Now, here is no cholesterol, extra light olive oil, yet I don't know what is extra light about it. I mean, compared to what?

Here is light and dark corn syrup, both with the same number of calories. The question is, what does "light" mean on a food label or anything else, for that matter?

I might say that, on behalf of Senator Hatch and myself, I think we should be commended for contributing to the economy of the country by going out and buying all these products in order to have them available today. We are happy to have all of these products available to us.

What does "light" mean on a food label? Dr. Wellman, you might want to respond to that.

Dr. **Wellman**. Well, it can mean many things. It can mean light in color, it can mean lower in calories, it can mean a smaller portion size, or it can even mean lower in sodium. A number of cheeses are called "light" cheese, and the only difference is that their sodium content is a bit lower, sometimes naturally so in the example of Swiss cheese.

Senator **Metzenbaum**. Clearly, a product should not be allowed to splash a "no cholesterol" claim on the front panel when it buries the saturated fat content on the back of the box. But where do we draw the line on health messages or health claims, and are they all bad, or are some helpful?

Ms. Haas, perhaps you'd like to answer that.

Ms. **Haas**. I would. I'd like to say one thing about the previous statement. As long as we don't have any standard for "light", and as long as the manufacturer can put it on at will, then it doesn't mean very much to consumers at all. I think that is what this legislation is all about. It's about setting standards so that the words that are used by manufacturers, whether they be health claims or characteristics like "light", mean something to consumers, and that they relate to health.

I think it has been our position at Public Voice and in this coalition as well, that in the proper way and regulated with the proper standards, that health claims and disease prevention messages are appropriate in today's marketplace.

The important thing is that we set those standards, so that we do not have misleading claims. At the same time, our intent is not to strangle the food industry. I think that the amended version of S. 1425 provides the kind of balance that is needed. We will then have situations where claims are used that would not increase dietary risk, while at the same time we are promoting a nutritional value in the product. I think if we look at this as a balancing act, then I think we can derive the kind of legislation that we need.

Senator **Metzenbaum**. Thank you.

Now, critics of this bill argue that we shouldn't prescribe the elements that appear on the label—fat, salt, cholesterol, carbohydrates, etc. I believe we have provided flexibility in the bill while specifically labeling the elements which are recognized as nutritionally significant.

For those of you with scientific background, do you feel that labeling these key elements—again, fat, salt, cholesterol, fiber, etc.—puts us on nutritionally solid ground?

Dr. **Wellman**. If I can respond to that, I would say definitely yes. I think there is substantial scientific evidence, and we have the foundation upon which to develop the regulation.

Senator **Metzenbaum**. Thank you.

Ms. **Chapman**. I'd like to comment from the American Heart Association's viewpoint, too. I think we absolutely concur with that. Since those have been the major nutrients for which we have given dietary advice for almost 20 years, we believe it is really a very important step forward to include those nutrients on the label.

Senator **Metzenbaum**. Thank you.

Now, the question of cooking oils is a particularly difficult one. These are all fat products, yet some are clearly better for you than others. Should an oil be allowed to make a "low saturated" claim to distinguish itself from heavily-saturated cooking oil?

Ms. **Chapman**. Let me just respond to that. In the American Heart Association's educational material, we identify all liquid oils as okay oils. As they become slightly hydrogenated, they become a little bit more saturated. However, even in their most saturated form, the hydrogenated fat only becomes about 25 percent saturated, that is, compared to something like other tropical oils that are 50 percent saturated or more. When you talk about oils, I think you have to distinguish what is typically acceptable. This would include corn, soybean, safflower, sunflower, canola oil, olive oil and peanut oil.

Senator **Metzenbaum**. As some of you know, one of the major companies in this country has had pending with the FDA for about 2 years a proposal to approve the sale of an oil that is to be low on fat, low on saturated oils, and allegedly causes no dietary problems.

Are any of you familiar with the product—I think it is being tested by P&G—and would you care to make any comment in connection with it?

Dr. **Wellman**. I am fairly familiar with the product. You are talking about Olestra, and it is a nondigestable fat in that it is not dissimilar to what happens with mineral oil. This means it is a complex molecule; it goes right through you. Olestra doesn't allow the enzymes in your G.I. tract to grab onto it and to break it down. Unless it is broken down, it can't be absorbed, so it passes right through.

It is my understanding that it is still under review at the FDA and that they have substantial scientific studies behind it that they are sharing quite openly with the scientific community.

There is another product also that works as a fat but is really a protein source. It is made from egg whites and the protein in milk, and that is digestible, but it is lower in calories because it is made from protein rather than fat. I think that one is still under review also. That is a natural food product from my understanding.

Senator **METZENBAUM**. Thank you.

Mr. **SILVERGLADE**. Senator, I have to add that we have expressed our concerns to FDA about Olestra. We have looked at the tests. We have some serious questions about them, and we have sent FDA our opinion on that.

Senator **METZENBAUM**. And in general, what are your concerns, Mr. Silverglade?

Mr. **SILVERGLADE**. I wish I had our scientific food safety staff sitting next to me, but since this was a hearing on food labeling, they are not here. We could certainly submit that for the record.

Senator **HATCH**. Would you yield for a second, Howard? Aren't they treating those as food additives, so they have to go through the whole food additive process.

Dr. **WELLMAN**. Yes.

Senator **METZENBAUM**. Back to the oat bran potato chips, these delectable products——

Senator **HATCH**. I want to try one of those before the day is over.

Senator **METZENBAUM**. Be my guest.

Senator **HATCH**. He is doing that too quickly; I'm not sure I want to eat them.

Senator **METZENBAUM**. The ingredients are potatoes, peanut oil, oat bran and salt. We all know about the studies regarding oat bran and cholesterol levels. My question is, should a company be allowed to market potato chips by sprinkling a little oat bran on them, with the implication that they are "heart healthy"?

Ms. **JOCHUM**. Well, I would say it is a misnomer, because potato chips don't contain oats. Of course, we know why they have incorporated them—to play upon the scientific evidence that if you eat so much oat bran, you lower your cholesterol level. The question is, how much oat bran would you have to eat to lower your cholesterol level significantly? Now I have forgotten the question, Senator.

Senator **METZENBAUM**. My question is, should the company be allowed to market potato chips by sprinkling a little oat bran on them in order to suggest that they are "heart healthy"?

Ms. **JOCHUM**. No. I think it is misconstruing the evidence, and it is strictly to prey upon the public. No, they shouldn't.

Dr. **WELLMAN**. It is interesting to me that I recently saw a billboard advertising oat bran pizza. So we are into billboard-size advertising.

Senator **METZENBAUM**. One argument on the legislation is that consumers aren't ready for this kind of information, that education should come first. Would any of you care to comment on that?

Ms. **HAAS**. No. I think having a consumer education program first would be like putting the cart before the horse. First you need the tools in the marketplace, which is where you purchase the products. It is critically important as you are purchasing the product to have that information there to help guide you to a healthy diet. Afterwards it is appropriate to have the education program to learn how to use the label.

I think that they both really go together as well. We shouldn't have one without the other. But nutrition labeling must come first.

Mr. SILVERGLADE. The surveys are quite clear on this, that consumers, the majority of Americans, are aware of the steps they should be taking to modify their diet in order to reduce their risk of diet-related disease, and they are trying to look at food levels. Surveys already show that, so we are ready for a better food label now.

Senator METZENBAUM. Thank you.

Senator Hatch.

Senator HATCH. Thank you.

Let me ask all of you a few questions. In a recent study conducted by the Federal Trade Commission entitled, "Health Claims in Advertising and Labeling: A Study of the Cereal Market", it was found that the health claims for cereals have had a marked positive effect on the eating habits of Americans, particularly nonwhites, smokers, and women living in female-headed households.

Considering these claims were made in a virtually nonregulated environment, do you believe it to be in the Nation's best interest to prohibit or severely restrict health claims, or should they be permitted and in fact encouraged subject to the requirement that they be truthful and nonmisleading?

Ms. Chapman.

Ms. CHAPMAN. Senator Hatch, if you look into that study, it is my understanding that those cereals that claim to be high in dietary fiber in fact were, and that that label was not used on any cereals that were not high in fiber. So in that case, I think the industry had taken a license. They had looked at the research that we have just heard from the gentleman from the Cancer Society about the need to increase dietary fiber and put forward some information. It is not my understanding that those products had any detrimental component as a part of those particular products.

I think that illustrates that there is a tremendous benefit of giving consumers information in a variety of settings. The American Heart Association has done a great deal in terms of public education. But in terms of when it gets down to the supermarket choice on the shelf—with that information that they can comparatively shop between products—it is difficult for them to know what that actual brand has in it. I think there are very appropriate uses, but again I think it needs to not confuse the consumer or to cover over other components in a product that are deleterious.

Senator HATCH. Ms. Jochum.

Ms. JOCHUM. I don't have information on that study.

Senator HATCH. OK. Ellen.

Ms. HAAS. The question you ask, Senator Hatch, is a good one, but let me say I believe there is no one at this table that would prohibit the use of health claims and nutrition messages. I think as we said earlier, there is an appropriate role for them—nor would I think that anyone would severely restrict them, as you said, so that we don't get that nutrition information in the marketplace.

The question is how do you define what is misleading. In the cases where there are both positive and negative attributes of a food product, it is very important if you are going to be putting forth the positive attributes, which might be no cholesterol or high fiber, that we also have protections so that the consumer understands some of the negative attributes that are in the product, like high saturated fat.

I think our challenge is how you define what is misleading and what kind of restrictions you put in there.

Mr. **SILVERGLADE**. Senator, I think the FTC should be given Ad Week's Pinocchio Award for those two studies. There are actually two studies. The first one looked only at Kellogg's All-Bran Cereal as an example of a health claim. That's the report that you discussed, which said that the company has been so successful in educating the public.

It is interesting about that label—that label was precleared by the National Cancer Institute, and the food had no nutritional drawbacks. And those are two criteria that the food industry has constantly opposed while this legislation has been discussed. They say they will not support any bill that requires preclearance of health claims, and they don't like health claims prohibited if the food has nutritional drawbacks. Yet, the example studied by the FTC met those two criteria.

With that information in hand, the FTC then issued a second report on the same day which called for a general policy very different from one that would require preclearance or prohibit health claims on foods that had nutritional drawbacks.

In fact, the FTC policy is basically the same as the policy the FDA has had in effect since 1987. The policy that was imposed upon FDA by OMB. We have seen the results of that policy—yes, there are some useful claims for cereals that we support, but there are many, many, many other misleading and deceptive claims and some that are downright false.

Senator **HATCH**. OK.

Dr. **WELLMAN**. I'd like to add that I do believe we need much stronger regulations for nutrient content claims and health claims, if only for the simple reason that those things are usually on the front of the package, and the nutrition information labeling information is on the back of the package.

What is displayed in the supermarkets, of course, is the front of the package, and we are not sure whether consumers actually turn the packages around and read the more controlled, regulated information.

Senator **HATCH**. OK. If health claims are to be permitted, could you recommend a test for the degree of substantiation needed to support a health claim which would balance the consumer's desire and need for diet and health information with the equally important public policy of ensuring labeling and advertising as truthful and not misleading.

Ms. Chapman.

Ms. **CHAPMAN**. I think the issuance of two major reports this past year by the Surgeon General and the National Academy of Sciences National Research Council illustrate the consensus that is building on particular areas, and I think they have also identified the major public health concerns. I think it is that type of body that comes together to look at the science that would indicate the importance of coming with a more consensus approach in the science as a measure of whether it is a sound health claim.

Senator **Hatch**. OK. Thank you.

Ms. **Jochum**. I concur that this would be a consensus of the major medical leaders in the Nation, scientific evidence consensus to permit such labeling.

Senator **Hatch**. OK. Ms. Haas.

Ms. **Haas**. We have to realize that we are never going to have unanimity in an evolving science. I think there are always going to be some people off to the left or off to the right who are going to disagree somewhat. However, if we are going to have claims in the marketplace that are not misleading, then we've got to base it on the best of scientific evidence.

As I said in my prepared remarks, we believe that scientific consensus is the appropriate standard. However, there are all kinds of ways that you can define that. The amended version of S. 1425 states that there is no significant scientific disagreement. I think this allows us to have the kind of foundation of scientific evidence that allows us some of the flexibility that you spoke of earlier, Senator Hatch. That is necessary, and I think that that is the kind of standard that would be appropriate.

Senator **Hatch**. OK. Mr. Silverglade.

Mr. **Silverglade**. We would support the standard in S. 1425; we have no significant scientific disagreement.

Fortunately, on the major problems related to diet and health, there is significant scientific agreement of the changes that we should make. We know about saturated fat, cholesterol and sodium and heart disease. There is little scientific disagreement about the relationship between fiber and diet-related disease.

Really, one article in *Atlantic Monthly* doesn't mean there is significant scientific disagreement. Where there is significant scientific disagreement involves nutrients and diet-related diseases that really are not major problems, vitamin therapy, for example, things of that sort. So I think the standard in S. 1425 is certainly the best standard.

Senator **Hatch**. Thank you. Dr. Wellman.

Dr. **Wellman**. I think we have significant scientific foundation for regulating health claims. The diet and health report from a dietician's point of view is the best thing that we have seen come along in a long time. It pulls together all the scientific studies to date, and it ranks them in priority and makes recommendations in terms of what foods one would be more likely to eat to be healthier. So I think we've got the information there.

The diet and health report is in concert with the Surgeon General's report.

Senator **Hatch**. That's great.

Well, Ms. Haas, you and I have worked together very closely to create the President's Commission on Disease Prevention and Health Promotion because I think we share the common goal of working to prevent diseases happening to the American people.

Ms. **Haas**. We have appreciated your leadership tremendously, Senator Hatch, in that effort, and it is wonderful to see the work that they have been doing.

Senator **Hatch**. Yes, I think so, too. I hope we can work together to work out some of these issues on food labeling as well because they really are important. Both Senator Metzenbaum and I, as well as other leaders in Congress, really are concerned in this area and want to do the very best job we can by developing a bill that will work.

Now, let me just ask you, Mr. Silverglade, a couple of questions. On numerous occasions, CSPI has decried the lack of consistent definitions for terms such as "natural", "light", "low in", "reduced", etc. Assuming that you support the development of single Federal standards for these terms, do you also support the proposition that all labeling requirements including nutrition claims, health claims, product names, ingredient declarations, and health warning claims should be nationally developed and uniform; and if not, how do you distinguish between nutrition claims and other labeling claims such as "warning"?

Mr. **Silverglade**. Well, I think there is a very easy way—the way the Food, Drug and Cosmetic Act has always distinguished between food safety and food labeling. No, I don't believe that this bill, which only covers nutrition issues—getting the fat and cholesterol out of our diet—should preempt State laws such as California's Proposition 65, which is trying to get the lead out of canned foods. There is a big difference between fat and cholesterol and lead cans.

You know, this is actually a good point. About 25 percent of all canned foods in the country come in lead soldered cans. When the cans are opened and stored in the refrigerator, studies show that lead seeps into the food and is a cause of blood poisoning among young children.

In California, there are reports that lead soldered cans are no longer being used because of California's Proposition 65. If they were used in California, the manufacturer would be required to put a health warning label on the cans about the reproductive hazards of lead if consumed in food.

I think—and I will let other environmental groups who are behind Proposition 65 defend that law in a different forum involving food safety—but I think the point is clear that addressing problems such as lead contamination is not the same at all as dealing with the fat and cholesterol and sodium in our diets. Certainly, a bill that addresses the latter should not preempt States in areas of food safety.

Senator **Hatch**. Well, I have a lot of other questions, but I will submit them to you in the interest of moving ahead here. But it seems to me—I hate to characterize your comments—but it seems to me that all citizens should have the benefit of knowing whether there is lead in a can, and I think that is part of having uniform nutritional labeling. But, if you are going to have 50 different approaches to it, then that means some citizens in some States have better information than citizens in others. It may mean that some citizens in some States pay considerably more money for what are really negligible health benefits.

So again it comes down to being reasonable, practical and making the best decisions you can under the circumstances. It seems to me without uniform mandatory labeling and Federal preemption we are going to have all kinds of difficulties like that.

If it is that important, then it ought to be part of the labeling process.

Mr. SILVERGLADE. Well, Senator, I have to disagree with you. It should be national—the FDA can't get rid of lead cans because under the Food, Drug and Cosmetic Act, lead soldered cans are prior-sanctioned, meaning they are grandfathered——

Senator HATCH. Then we have to change that.

Mr. SILVERGLADE. Well, we need to change the food safety laws.

Senator HATCH. Well, let's change it preemptively so that everybody in the country benefits, not just those in California.

Mr. SILVERGLADE. That has to be done in the context of a hearing on food safety laws, because that's why there is lead in cans, not because of labeling.

Ms. HAAS. Senator Hatch, if I may just add one point, as this committee has discussed in the pesticide issue—and has addressed it—we do not have the strong standards that are needed. The President has recognized that in his proposal, and the committee is addressing certain legislative proposals.

In the absence of strong standards in the food safety area, disclosure becomes paramount. It is most important. Therefore we can't take away that protection and that right of consumers to have the information.

With nutrition labeling, as your bill and Senator Metzenbaum's bills both will provide, we would have the strongest of standards and therefore, preemption for nutrition labeling or claims would be very appropriate.

Senator HATCH. Yes. I would support it if the standards are strong enough.

Ms. HAAS. But we don't have that in the food safety area, and I don't think there is anyone who would say that we would. Therefore, we have to separate the tracks of food safety and pesticide regulation from nutrition regulation. We cannot tarnish our progress in nutrition labeling. If we allow this debate to just revolve around preemption, we'll have another 20 years, and we'll have the next White House Conference on Nutrition say we still don't have mandatory nutrition labeling.

Senator HATCH. Well, my point has always been we should put them both together so that you can have mandatory preemption. And we are capable of doing that.

Mr. SILVERGLADE. Well, Senator, Ellen and I have been working on food safety laws now since 1981, and——

Senator HATCH. Yes, and I remember back in 1981, when I first started to bring up the negligible risk standard, the decrying I took from all over America by people just like you, and today, that's where we are. Now, we would have been 8 years ahead if we had just followed what we were doing back then.

Mr. SILVERGLADE. Well, we have a consensus on food labeling; the industries, the FDA, consumer and health organizations all agree—so why don't we move ahead on things that we have a consensus on, which is nutrition labeling?

Senator HATCH. In other words, don't do what is right for the rest of the public because some organizations may or may not agree, or may think it should be more stringent. Look, I think these are important areas, and I think we ought to move ahead in the best interests of the public and not haggle over them. But be that as it may, that's part of what makes this country great are the differences of opinion. But——

Ms. **Haas.** We do have an opportunity to move ahead with Senator Kennedy's legislation on pesticides. So there is an opportunity to deal with these food safety questions on another track.

Senator **Hatch.** Only part of the food safety questions, when we could deal with all of them. You see, that's what I have trouble with. What bothers me is that we recommended years ago that we move to a negligible risk standard and get rid of this idiotic fealty to the Delaney clause that allows some foods to be on the market that shouldn't be there and prohibits others that should be there from being there. Anyone who has looked at this area lately knows it is not scientific; it is the least scientific approach we can have. And yet we are still having these difficulties.

I guess that is a debate for another day. But I have appreciated the testimony we have had, and it has been very interesting to me.

Senator **Metzenbaum.** Thank you very much. We appreciate the cooperation of this panel and your support for my legislation. We look forward to continuing to work with you.

Senator **Metzenbaum.** Our last panel includes Mr. E. Linwood Tipton, president of the Milk Industry Foundation and the International Ice Cream Association; John R. Cady, president of the National Food Processors Association; Sherwin Gardner, vice president for Science and Technology, Grocery Manufacturers of America, and George Burditt, of Burditt, Bowles and Radzius.

I think you all know our 5-minute rule. We are happy to have you with us.

Senator **Hatch.** And I want to welcome all of you here, too. I have to run, but I do want to welcome you all and thank you for coming.

Senator **Metzenbaum.** I want to say that the chair feels that there has been some progress made as far as the food industry is concerned with respect to this subject. The only trouble is I feel that being "a little bit pregnant" doesn't solve the problem. I would hope we could find some means of working out the differences that continue to exist. We stand prepared to work with you and to meet with you as much as is necessary in order to bring about a consensus.

We'll start off with Mr. Tipton, president of the Milk Industry Foundation and the International Ice Cream Association.

STATEMENTS OF E. LINWOOD TIPTON, PRESIDENT, MILK INDUSTRY FOUNDATION AND INTERNATIONAL ICE CREAM ASSOCIATION; JOHN R. CADY, PRESIDENT, NATIONAL FOOD PROCESSORS ASSOCIATION; SHERWIN GARDNER, VICE PRESIDENT FOR SCIENCE AND TECHNOLOGY, GROCERY MANUFACTURERS OF AMERICA, AND GEORGE BURDITT, ATTORNEY, BURDITT, BOWLES AND RADZIUS

Mr. **Tipton.** Mr. Chairman, on behalf of the dairy industry, we want to thank you for this opportunity to testify.

Dairy foods are unique. They are one of the four basic food groups. They are rich in nutrients, including vitamins and minerals, and we have a long history of providing nutrition information.

We helped pioneer nutrition labeling in the early 1970's, during the period of nutrition deficiencies. We are prepared to lead again, but we want equal treatment with respect to all foods.

Eighty percent of dairy foods on the supermarket shelves are currently nutritionally labeled. While nutrition labeling legislation under consideration starts to define the labeling in foods, it stops far short of providing an adequate basis for comparison. The bill sets as its standard to provide information in the context of total daily diet, but covers only about 35 percent of the U.S. consumer's food dollar.

Only with labeling of all foods eaten on all occasions, can consumers make informed choices about food selections in their diets. For instance, skinless chicken is usually regarded as low in fat. However, 6 chicken nuggets at a fast food restaurant contain the equivalent amount of fat as 1½ pints of regular ice cream. We believe everyone has the right to know the nutrients of all foods at all times.

Nutrition labeling must not provide a basis for unfair discrimination among foods and possibly lead to unbalanced diets. It should facilitate the consumer's ability to choose a healthy, well-balanced diet from the full variety of foods available and at all occasions. The only way to provide that information on which informed choices and decisions can be made is to nutritionally label all foods. Foods without many nutrients should be labeled to divulge their deficiencies. We should avoid the potential for nonnutritious foods appearing to be nutritionally superior to those which make significant nutrition contributions simply because they are not labeled.

We applaud the goal of the members of Congress to provide more complete nutrition information to consumers.

Mr. Chairman, we are pleased to see the inclusion of vitamins and minerals in the list of nutrients required to be on the label in your bill. Many of these are very important. This is a significant improvement to the House version.

While most Americans receive adequate vitamins and minerals in their daily diet, those with the most urgent nutritional needs such as poor, elderly, or pregnant women, smokers, dieters and those suffering from infections or diseases, may not. It is important to label the positive nutrients of food, not just the ones to watch out for.

For many years the dairy industry has been a leader in providing consumers reduced calorie and reduced fat alternatives. Many products have long-established Federal standards of identity which are fully recognized by consumers—for example, lowfat yogurt, lowfat cottage cheese, lowfat milk and light cream. These products are subject to the standards of identity which describe the composition of the food. We are fearful that the proposed legislation might disrupt these long Federally-established names. Descriptive terms helpful to consumers and not misleading should be allowed to be continued in use.

Mr. Chairman, we urge you to carefully review the effect of your bill on existing standardized foods, common or usual names, and brand names. This is extremely important.

We believe the descriptor claims and health claims sections of the bill are overly burdensome, often will prevent the use of descriptors which are helpful to consumers in making their selections, and generally could be more harmful than helpful. Label statements which characterize the amount of the nutrient in the food can be helpful to consumers and should be allowed. If the nutrient characterized in the statement has nutritional significance as defined in the regulations, the statement uses terms which are defined in the regulations, the statement is accompanied by a reference to the complete nutrition label on the product—i.e., full disclosure of all nutrients—the statement is not descriptive or misleading in light of other nutritional properties of the food, we believe those are four criteria which would solve the problem on claims.

Full disclosure and prohibition against deceptive and misleading statements will allow consumers to properly evaluate claims or descriptions on the food labels. The standards in the bill—i.e., each of the nutrients required to be labeled in an amount which does not increase the risk of diet-related disease or health conditions of an individual in the general population—is too restrictive.

We believe the Food and Drug Administration should have the full authority to determine specifically how to label the format and should have total enforcement authority. We applaud the approach taken by Senator Hatch in laying the groundwork but leaving the details of the bill as written to the regulatory agencies.

National uniformity is important. The concept of national uniformity and enforcement requires equal labeling of all important nutrients on all foods consumed on all occasions in all places—the same rules no matter where you live or what you eat.

Likewise, States should be prohibited from promulgating laws or regulations which may mislead or confuse the information that is Federally required.

In summary, Mr. Chairman, we believe your bill falls short of providing full and uniform nutrition labeling and contains inappropriate claim provisions which could eliminate useful consumer information. Legislation introduced by Senator Hatch includes the necessary requirements for the Secretary of Health and Human Services to act and provides adequate authority for FDA to move forward and do its job.

Neither bill encompasses all foods eaten on all occasions, and we believe this is essential for the consumer to truly select balanced diets. Mr. Chairman, thank you for the opportunity to testify.

Senator **Metzenbaum**. Thank you, Mr. Tipton.

[The prepared statement of Mr. Tipton follows:]

PREPARED STATEMENT OF E. LINWOOD TIPTON

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear today on behalf of the Milk Industry Foundation and International Ice Cream Association to provide comments on proposed nutrition labeling legislation.

The Milk Industry Foundation (MIF) is the national trade association for processors of fluid milk and milk products, such as yogurt, cottage cheese, sour cream, soft cheeses, and dips. MIF's 220 member companies operate over 1000 plants nationwide and process nearly 80 percent of the fluid milk and related products consumed in the United States.

The International Ice Cream Association (IICA) is the trade association for manufacturers and distributors of ice cream and related frozen dessert products. Its 210 member companies operate about 800 plants nationwide and manufacture and distribute approximately 85 percent of the ice cream and related frozen desserts consumed in the United States.

Together, these two segments of the dairy processing industry utilize about two-thirds of the nation's milk supply to produce their products. The member companies of both associations are proud of the number and variety of nutritious products they provide and from which consumers can choose.

Dairy foods constitute one of the four basic food groups along with cereals, fruits and vegetables, and meats (including fish and poultry). They provide many important nutrients such as protein, calcium, phosphorous, magnesium, and many vitamins. Our industry has a long history of providing complete and accurate nutrition information to consumers and helped pioneer many of the nutrition education programs currently in use around the country.

In addition, the milk industry was the first in the food industry to endorse nutrition labeling. In the early 1970's, our Associations supported nutrition labeling. With the assistance of the Food and Drug Administration, we developed labeling information manuals that have allowed efficient and accurate presentation of nutrition information on fluid milk, milk products, ice cream, and related products.

Today, these manuals are used throughout the country not only by dairy foods processors, but also by state regulatory agencies and the FDA as reference documents for checking individual label compliance with existing nutrition labeling regulations. Collecting and preparing the nutritional data supplied in these manuals was accomplished at great expense to the Associations.

As a result of these activities and other voluntary labeling actions by milk and ice cream manufacturers, about 80% of all dairy foods found on supermarket shelves currently bear nutrition labeling. It is from our unique perspective within the food industry, and with our considerable experience in labeling the nutrient content of our products, that we respectfully suggest the following basic principles to guide any revisions to regulations governing the content of the nutrition label:

Nutrition labeling information should be mandatory only if it is extended to all foods.

We support providing complete, useful, and useable nutritional labeling information that will enable consumers to manage the total nutrient intake of their individual diets. However, in order for this to work, we believe mandatory nutrition labeling should be extended to all foods with no exceptions.

Since many food items are unaffected by Food and Drug Administration regulation, including meats and foods consumed away-from-home, mandatory nutrition labeling placed solely on FDA-regulated foods will not provide sufficient information for the total diet. Such a stance may, in fact, encourage consumption of less nutritious foods simply because they are not labeled to provide information about fat, calories, or sodium, thus permitting the consumer to indulge in "blissful ignorance."

If the nutrition information supplied to consumers is to be truly meaningful in terms of the total diet, complete information should be available to them for all the foods they consume, including away-from-home purchases such as "fast food."

Expanded nutrition labeling must not provide a basis for unfair discrimination among foods and possibly lead to unbalanced diets. Nutrition label information should facilitate the consumer's ability to choose a healthy, well-balanced diet from the full variety of foods available and at all occasions.

The nutrition label should bear complete nutrient information, including vitamins and minerals.

Good nutrition dictates eating a variety of foods that can be selected from the four basic groups, not selecting food groups that avoid certain components. Some have argued that it is no longer necessary that the nutrition label bear vitamin and mineral information. We strongly disagree with this assertion. Vitamins and minerals are important contributors to good nutrition and health, and therefore, should not be overlooked.

While most Americans are no longer deficient in vitamins and minerals, we should not overlook those with the most urgent nutritional needs, including the poor, the elderly, certain minorities, women of child-bearing age (especially pregnant and lactating women), those suffering from infections and diseases, dieters, and smokers.

Some specific examples of the important micronutrient information needs in this nation have been identified in the 1988 Surgeon General's Report on Nutrition and Health, the Public Health Service draft report, Promoting Health/Preventing Disease: Year 2000 Objectives for the Nation, and the National Academy of Sciences' Recommended Dietary Allowances (9th Ed.). They include:

The Elderly

As their metabolism fails and physical activity decreases, the elderly require less food to meet their daily energy requirements. As a result, extreme care must be taken to ensure that food intake provides essential nutrients. In addition, the elderly are more likely to suffer from chronic diseases and require certain medications that may necessitate dietary modification and increased intake of vitamins and minerals.

The Poor

A limited food budget can make the intake of essential vitamins and minerals extremely difficult without proper information. The lack of essential vitamins and minerals can lead to serious functional consequences, particularly among children.

Pregnant and Lactating Women

Pregnant women have high nutrient needs and a consequent need for information about vitamins and minerals in their diet. Among several factors, failure to maintain proper nutrition during pregnancy can result in such problems as premature delivery, low birth weight, and birth defects. Women who are breast-feeding their babies also have a critical need for proper intake of vitamins and minerals and therefore for information about the presence or absence of vitamins and minerals in their diet.

In addition, a large percentage of the public fails to consume the Recommended Daily Allowances of vitamins and minerals...

NUTRIENT	PERCENTAGE OF TOTAL POPULATION WITH INTAKE LESS THAN 100% U.S. RDA
Vitamin A	50%
Vitamin C	41%
Thiamin	45%
Riboflavin	34%
Calcium	68%
Iron	57%

Source: USDA Nationwide Food Consumption Survey

Placing undue emphasis on nutrients that some believe should be reduced or eliminated in the American diet and dropping requirements for labeling of important vitamins and minerals may well re-create problems associated with deficiencies of certain micronutrients. This can be avoided by requiring complete and understandable information about all nutrients.

Food nutrition labels that do not fully disclose complete information may facilitate claims regarding low levels of certain nutrients, and unfairly disadvantage foods whose macronutrient "profile" may not be viewed as favorably. In other words, if we require labels to contain only information about those components we should "watch out for," such as fat or sodium, we could create a dangerous imbalance in consumer perceptions regarding foods.

We are fearful that some foods could claim low levels of certain macronutrients, but not be required to inform consumers that the products are also very low in or devoid of many or all of the essential micronutrients.

For instance, without a balanced approach to nutrition labeling, a carton of 1% lowfat milk may not compare favorably with some other beverages that have no fat, saturated fat, or cholesterol, even though milk is far more nutritious than most beverage alternatives. We pose the question: "Is a beer or diet soft drink a more nutritious choice than a glass of 1% lowfat milk?"

Standards of Identity should be preserved, but the procedure for amending existing standards and proposing new standards should be improved.

The dairy industry has probably spent more time and resources on standards of identity than almost any other segment of the food business. From dry curd cottage cheese to sour half and half to heavy cream, almost every product our member companies manufacture is subject to a standard of identity.

It is true we have had our share of headaches with this system, but the overriding fact is that standards of identity have brought a level of consistent high quality to our industry, and we have earned the confidence of American consumers as a result. Unfortunately, we believe this message has been lost at senior levels of the Food and Drug Administration and, perhaps more importantly, at the Office of Management and Budget. We take this opportunity to encourage the federal government to dedicate sufficent resources to continue an active role in this area.

If we did not believe that this system works, we could have ignored the recent call from the frozen dessert industry, the states, and the public to develop standards of identity for frozen yogurt, frozen lowfat yogurt, and frozen nonfat yogurt. We did not ignore this need, however, and last June our proposals for standards for these products were submitted to FDA and from which they will hopefully emerge at some point in the near future.

We agree with those who say that the standards system can pose barriers to new product innovation and has failed to keep pace with advances in food technology. The rapid developments taking place in sweeteners and fat replacement technologies make the system's weaknesses even more acute.

We do believe, however, that it is not the concept of standards that is at fault, but rather the operation of the system. The sometimes painfully slow means of adoption and change within the food standards program can even be seen as in conflict with other policies and programs of the federal government. For example, many of the recent dietary recommendations coming forth from various public health officials have encouraged a reduction in the amount of calories from fat.

The dairy industry has responded by attempting to market reduced fat versions of traditional dairy products, such as ice cream, sour cream, and eggnog. In order to let consumers know that these products are completely acceptable substitutes for their higher fat counterparts, proposals have been submitted for new standards of identity employing the existing food names with the prefix "light" or "lite." These proposals were submitted to FDA over one year ago and have yet to be published in the *Federal Register* for subsequent action. As a result, dairy manufacturers are reluctant to market these products under alternate nomenclature, and these products are not being offered for sale to the extent possible. Due to the problems caused by the rather lengthy process to amend existing standards, we also have not seen any meaningful marketing of reduced calorie ice cream and ice milk products made with aspartame.

We would reiterate our statement that FDA be permitted to devote sufficient time and personnel to these issues. To assist in updating and streamlining the procedures to permit more expedited changes, we have urged the Commissioner to appoint a blue ribbon committee of qualified individuals from FDA, the states, the food industry, and consumer organizations to develop a mechanism by which the process for amending existing standards and establishing necessary new standards can be improved. The Milk Industry Foundation and the International Ice Cream Association would be pleased to participate in any such endeavor.

Standardized foods which utilize a descriptive term as part of the name of the food should be exempt from additional "descriptor" labeling regulations.

For many years, the dairy industry has been a food industry leader in providing consumers with reduced calorie and reduced fat alternatives. Many products, such as lowfat milk, lowfat yogurt, lowfat cottage cheese, and light cream have a long established identity with the public.

These products are currently subject to standards of identity which require the inclusion of the terms, "lowfat" and "light," as part of the name of the food. Based on their long history in the marketplace, we would urge the exclusion of these foods from any future regulations governing the use of these terms.

We applaud the recognition of standardized foods in the bill reported out of the House Subcommittee on Energy and Environment and would hope that the Senate bill would also allow for the continued use of these terms which are specified in standards of identity or which are, through use, the common or usual name of the food. We believe the use of such terms should not be construed as a "health claim" and thereby subject to the additional constraints of the health claims section.

Food descriptor claims help consumers identify food attributes. Label descriptors have been used to inform consumers about important and beneficial food attributes. These descriptors are an extremely useful way for food manufacturers to distinguish their products from others in the same category, and they help consumers find the products that have the qualities they are looking for out of the innumerable food items sold in stores today.

We believe the Nutrition Labeling and Education Act should allow the continued use of food descriptor claims so long as they are properly defined and are not misleading to consumers in the context of full nutrition labeling.

The regulations adopted by FDA to define descriptors for calorie content and sodium content were established only after intensive internal study and evaluation of data supplied by all interested outside parties. A similar procedure has been employed for the proposed set of cholesterol descriptors. We support this approach to defining terms which can accurately portray the relative amount of individual nutrients in a finished food.

Claims section is needlessly complex.

Providing full and accurate information on food labels about the nutrient content of foods, including label statements which characterize the amount of a nutrient in the food, can be helpful to consumers and should be allowed under the following conditions:

1) the nutrient characterized in the statement has nutritional significance as defined in regulations;

2) the statement uses terms which are defined in regulations;

3) the statement is accompanied by a reference to the complete nutrition label on the product; and,

4) the statement is not deceptive or misleading in light of the other nutritional properties of the food

We believe a provision in the bill spelling out these conditions could replace much of the complexity currently contained in the claims section of the Bill and would result in more helpful information for consumers than the complex test of whether a food contains a single nutrient which exceeds some guideline. Full disclosure and a prohibition against deception and misleading statements is the answer to properly permit consumers to evaluate health claims.

FDA should have full authority.

Instituting appropriate nutrition labeling changes will require adequate and systematic consumer research, market pre-testing, and evaluation of proposed label format changes before they become regulation. Proper coordination will ensure that companies are not faced with multiple label revisions. This approach should be spear-headed by the Food and Drug Administration.

Just as development of an appropriate nutrition label should rest with FDA, so should enforcement of any labeling provisions subsequently adopted. We oppose state enforcement as set forth in the Bill.

Timing of implementation.

For food processors, changing product labels is a big step requiring ingredient analysis, data gathering, and dissemination, as well as actual revision and reprinting of product containers and labels. These steps are an important part of the process and adequate time should be provided to allow proper revisions in a cost-effective manner.

Changing labels on virtually all food containers is a very expensive and time consuming matter. Often, companies' inventories of products may be sufficient to last well over a year, and inventories of packaging labels may be even longer. Discarding products or packages in inventories simply because they failed to meet any new nutritional labeling requirements within a few months of the finalization of a rule is inappropriate and should be avoided. The effective date should be established after considering these facts.

National uniformity and enforcement is essential.

The dairy foods business is highly competitive on a regional and national basis. In addition, consumers are more mobile today than ever before. It would be a mistake to allow a multiplicity of labeling rules, creating an impediment to interstate commerce and to consumer understanding. Labels should bear uniform information with direction and enforcement from the federal Food and Drug Administration.

The concept of national uniformity and enforcement requires equal labeling of all nutrients (macro, as well as vitamins and minerals), on all foods (including fast foods and those under USDA's jurisdiction, as well as FDA's jurisdiction.) It also includes the same rules and enforcement in all political subdivisions. Finally, it must not only include uniformity with respect to the specific provisions of this legislation, but also it must prohibit other state or local jurisdictions from required labeling which in any way conflicts or makes the labeling provisions of this legislation less effective.

In summary, the legislation introduced by Senator Metzenbaum (S.1425) falls short of providing full and uniform nutrition labeling and is far more complicated than necessary to accomplish the task at hand. Legislation introduced by Senator Hatch (S.1505), however, includes the necessary requirements for the Secretary of Health and Human Services to act and provides authority for the federal Food and Drug Administration to move forward expeditiously. While neither of these bills is broad enough in scope to encompass all foods on all occasions, we believe the approach of the Hatch bill is preferable.

Senator **Metzenbaum**. Mr. Cady.

Mr. **Cady**. Thank you, Mr. Chairman.

My name is John Cady, and I am president of the National Food Processors Association.

NFPA believes it is time for a national food labeling policy, one that takes into consideration nutrition labeling, health and safety warnings and other aspects of a food package that come under the heading of general labeling.

The consumer interest and need for a national labeling policy is apparent, and the need for all consumers, regardless of where they live, to have access to the same information is paramount.

A national, uniform, all-encompassing labeling system would satisfy these consumer needs.

It is also time to put strength into FDA by allowing the agency to fulfill its mission for the Federal Government and the Nation's consumers. There is no reason why a strong labeling law at the Federal level cannot be defined and enforced for all consumers across the country by FDA.

It is also time to address all labeling issues and refrain from leaving part of the issue open to further debate. We have arrived at a point that has taken us years to reach. We should take advantage of where we are and address the labeling issue on a national uniform basis rather than on a recipe basis and a basis which leaves issues open to individual, nonuniform State requirements.

It is time to answer the consumers' needs, and we ask that the committee enact the enabling legislation that is required. We ask that the committee allow FDA to do its job and establish a framework where the label and its rules and regulations are allowed to evolve from input from all interested parties, with the end result being a national uniform labeling system with mandatory nutritional labeling.

In the enabling legislation, the Congress should establish dates certain for FDA to complete its tasks and for dates for reports on its progress. I believe S. 1506, introduced by Senator Hatch, goes a long way toward achieving a national food labeling policy. The contents of S. 1506 should be discussed and its essential elements incorporated into any legislation reported out by this committee.

On the subject of health claims, we believe they must be allowed for communication with consumers and customers on the relationship of dietary and nutritional aspects of foods to health matters. Such claims should be accompanied by a statement clearly indicating that the product must be part of a well-balanced diet. Health claims should not require pre-clearance as the time involved for approval would be nonbeneficial to both the consumer and the industry. Pre-clearance would stifle new health and diet innovations. We do ask FDA to issue strong uniform health claims rules and regulations along with penalties for rule violations.

Health claims should have scientific backup data available, although release of competitive advantage and/or product formulation data must be addressed, or industry research on new improved products will cease.

Competitive advantages and product formulations must receive protection. Health claims must be truthful, not misleading, and subject to stringent enforcement.

Finally, NFPA believes that legislation should take into consideration the results of FDA's labeling initiatives now being carried out across the country through the agency's hearings. It is important that the Congress hear directly from the public as part of its labeling law deliberations. NFPA for its part has completed phase one of its consumer research study on labeling and has begun phase two, where we will show some 40 different labels to consumers utilizing many forms, graphic and others, to determine what type of label format and content consumers desire.

The results of this study will be made available to FDA, this committee and other interested parties.

NFPA strongly urges that resulting legislation require a national consumer education program which addresses the labeling system. A national uniform labeling law as part of an overall national policy must have a consumer education program for helping the public fully understand new labeling requirements.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Mr. Cady.

[The prepared statement of Mr. Cady follows:]

PREPARED STATEMENT OF JOHN R. CADY

Mr. Chairman, my name is John Cady, President of the National Food Processors Association, and I appreciate this opportunity to appear before your Committee today to address the issues raised by the Nutrition Labeling and Education Act of 1989. The National Food Processors Association, a scientifically based trade association representing over 600 companies in the food processing industry, was founded in 1907 in order to represent food processors on a broad range of legislative, regulatory and food safety issues. The Association has been deeply involved in a number of food labeling regulatory and voluntary programs over the years, including promulgation of standards of identity; net content labeling under the Fair Packaging and Labeling Act; nutrition labeling; health messages; our descriptive labeling program; date labeling; drained weight labeling; and sodium content labeling for all foods.

With reference to the instant bill, the food industry must start with the prerequisite that food labeling and safety requirements must be prescribed on a nationally uniform basis. Consideration and adoption of legislative or regulatory changes in food labeling requirements must involve full participation by all interested segments of our society, including government, industry, consumer advocate groups and, most importantly, individual consumers. The development of national labeling rules must recognize the complexity of the issues involved, and should not attempt a quick fix without all relevant facts and views being presented and considered. Congress must of course enact the necessary statutory authority, establishing basic guidelines and policies, but consideration and development of specific labeling requirements must be left, we believe, to the federal administrative process, based on the accumulated years of expertise of the FDA.

Once Congress and the FDA, working together in this fashion, have debated and resolved these issues at the federal level, it makes no sense for those who are dissatisfied with any aspect of the federal resolution of the issue to defeat its effectiveness by securing adoption of state requirements that impose additional, varying or inconsistent requirements for the regulation of food and food labels. The labeling policies and requirements that are appropriate for Portland, Maine, are equally applicable to Portland, Oregon.

Varying or inconsistent state labeling, health and safety requirements seriously undercut the effectiveness of federal statutory and regulatory policies and controls, and create confusion and uncertainty in the minds of consumers. They also seriously disrupt the interstate distribution of foods in a national market, and unduly burden local economies with unneeded costs which are passed on to consumers in the form of higher prices.

Indeed, it is paradoxical that at a time when Europe is well on its way to a unified market and the adoption of uniform regulation of products that move across national boundaries, some in this country are calling for the rejection of a national policy that is based upon adoption of uniform rules and the prevention of barriers to the free flow of food products in interstate commerce. Recent developments in Europe recognize the increasing global nature of food production, processing and distribution. Through Codex Alimentarius, countries throughout the world are agreeing to the need for labeling uniformity, and the freest possible distribution of food products without inconsistent or conflicting local or regional requirements. The United States' historic commitment to free trade in the distribution of foods militates strongly in favor of an explicit provision of federal law that prevents states or localities from imposing their own ideas about the labeling and contents of foods, and thereby disrupting both the national and international marketing of food products.

For these very fundamental reasons NFPA and its members believe that the starting point for consideration of totally new food labeling and regulatory schemes must be explicit acceptance of a national uniform system of food regulation. Once it is made clear that national, uniform labeling requirements relating to nutrition, health and safety will definitely be made a part of any legislation or regulation in this area, then NFPA will be more than willing to participate fully in proceedings in Congress and with the FDA to reach a consensus as to what specific labeling requirements should be adopted on a mandatory basis.

National uniformity will allow for a much needed nationwide nutrition education program that would go hand-in-hand with any new set of labeling rules. We must have a national nutrition education program so that government, consumer groups, industry, health organizations, the media and, most importantly, the consumer will be utilizing the same set of information regarding nutrition, dietary decisions, and food safety.

While our association, and the food industry in general, favor making the food label more responsive to the nutritional needs of today's consumers, we will not here attempt to deal with the specifics of the labeling provisions of this bill. We very strongly believe that any federal food labeling legislation relating to nutrition and health at this point should be confined essentially to assuring national uniformity and empowering the FDA to consider and develop revisions to its announced nutrition labeling program. To some extent the bill before us takes this approach by authorizing the FDA to propose and adopt regulations to carry out the manner in which the statutorily required information will be included in food labels and labeling. We are concerned, however, that in some respects the bill would pre-judge certain issues and seriously restrict FDA's discretion by imposing such recipe requirements as serving-size definitions for all foods, and compulsory declaration of calories derived from total fat and saturated fat well in advance of the label development process.

Another aspect of the bill that gives us some concern is the provision for the National Academy of Sciences to prepare a report making recommendations on the manner in which the required nutrition information is to be presented. The NAS is undoubtedly a most respected scientifically based institution, but it is not expert on consumer communication, it includes no industry representation, it provides for no consumer input, and as far as we know it has little experience or expertise on food labeling matters. If NAS believes it is able to contribute to the food labeling debate, then it should of course be free to do so, but we see no need for forcefully injecting NAS into the existing administrative process.

As the agency responsible for the implementation and enforcement of the Federal Food, Drug, and Cosmetic Act, the FDA must carry the burden of developing a public record that will support changes in nutrition labeling requirements. In order to make useful and effective contribution to that effort, NFPA has undertaken a major study to consider consumer perceptions and satisfaction with food labels, and to determine what consumers want and need in food labels of the future. We think this consumer study will provide important data that should be taken into account in any national effort to change food labels, and to be responsive to consumer desires concerning good nutrition and the selection of a healthy diet. The NFPA study will be completed by the end of the year.

Turning to the health claims provisions of the bill, NFPA is strongly of the view that the FDA has adequate authority to consider this issue and to adopt regulations that will serve the interests of consumers. Our Association initiated discussions with the FDA Commissioner in 1984 looking toward the modification of FDA regulations that purport to prohibit disease-related statements on food labels. We followed up these discussions with the submission of a Citizen Petition in the spring of 1985, formally proposing regulations that would permit health claims on labels, with adequate safeguards and standards for enforcement. We continue to urge the FDA to finalize regulations that are consistent with its proposal of August 1987, in order to ensure that appropriate health messages will be permitted and that irresponsible or unsubstantiated label claims will be promptly moved against by the agency.

Accordingly, we request that Congress leave the health claims issue in the hands of the FDA. Inclusion of the health claims provision in the bill would further delay the already protracted regulatory process. Here again, we believe that the FDA itself is in the best position to formulate labeling requirements and regulatory safeguards, and we see no need for the injection of this issue into the legislative process, where no new statutory authority is needed and where consideration of the issue could merely complicate the legislative process.

One particular aspect of the health claims provisions of the bill that gives the food industry extreme concern is the total prohibition of health claims unless every constituent in the food is present in amounts that would reduce dietary risk to persons in the general population. This provision is necessarily based on the concept that there are so-called "perfect foods" from which consumers can reasonably be expected to obtain balanced, acceptable diets.

There are, of course, no "perfect foods." Nutritionists emphasize that a wide variety of foods, eaten in moderation and as part of a balanced diet, are necessary for consumers to obtain all required nutrients, including those that may not yet have been identified or clearly established by science. Undue attention to a particular "bad" constituent -- such as by insisting that consumers should totally avoid foods that may be higher than others in that constituent -- would result in a seriously inadequate diet. There are no bad foods of themselves.

The Congress and federal regulatory agencies certainly have a role to play in consumer education and nutrition labeling, but they must not attempt to become the decision-maker as to what particular choices consumers must make in their diets. Federal guidelines and consumer education programs will help consumers select from a variety of foods to satisfy their tastes as well as their nutritional needs. A realistic approach to diet and health must account for widely varying consumer tastes and preferences due to lifestyle, ethnic background, geographic dietary customs, availability of foods, price, and other personal factors.

Accordingly, a national nutrition labeling program must not condemn certain foods as "bad." Instead, such a program must provide for fully informative labeling that enables consumers to arrive at their own choices and dietary schemes based on their individual tastes, needs and desires. Give consumers the priority facts they want, without information overload, and let them make their choices in putting together a balanced, acceptable diet. Any suggestion that there may in fact be perfect foods could encourage consumers to reject the basic staples of the American diet in favor of highly formulated specialty foods that substantially increase the consumer's cost without in fact assuring a balanced, healthful diet.

In summary, NFPA supports mandatory nutrition labeling legislation that will enable the FDA to consider all relevant views and information in the light of its own expertise, and then to promulgate nutrition and health labeling requirements that will be applicable on a uniform basis throughout the country. In our view, S. 1505, introduced by Senator Hatch, would provide an excellent starting point for consideration and enactment of legislation along those lines.

We again would like to express our appreciation to the Committee for this opportunity to appear and to take part in your consideration of this most important issue.

Senator **Metzenbaum**. Mr. Sherwin Gardner, vice president for Science and Technology at Grocery Manufacturers of America.

Mr. **Gardner**. Thank you, Senator Metzenbaum.

I am pleased to be able to submit the views of the Grocery Manufacturers of America today on S. 1425, the Nutrition Labeling and Education Act of 1989.

We agree that this bill is timely in that it would establish new labeling requirements in recognition of scientific knowledge and in that it responds to the public interest in nutrition and health information. GMA agrees that 15 years after nutrition labeling requirements were first established, there is a need to update labeling policies and requirements.

In that regard, there are several guiding principles in our view that should apply in the consideration of any new labeling law.

First, the Food and Drug Administration is the appropriate organization to undertake a labeling review because nutrition labeling questions turn on matters of science. Because FDA is a scientifically-based regulatory agency, it is well-positioned to determine the specific details of any nutrition labeling rules. We also believe it has sufficient authority to take on this task.

The second principle is that dietary, health and safety information must be based on the best and most current science available. Because scientific knowledge is continually changing, detailed labeling requirements should not be written into statute but applied by FDA through its rulemaking procedures.

The third principle concerns labeling requirements is that they should permit honest, meaningful communication with consumers and also permit sufficient flexibility for manufacturers to comply efficiently with those requirements. Our laws and regulations should establish appropriate rules that guide the way health and nutrition information is provided in labeling. However, we should not close off an effective way of communicating that information.

The fourth principle is that there should be a nationally uniform set of labeling rules for nutrition and health information. Valid health information is not a function of geography. Health knows no borders. Whatever the Federal Government establishes in the way of scientifically-based labeling requirements should apply uniformly across the country.

In general, S. 1425 is unduly rigid and restrictive in its requirements for nutrient declarations. No exceptions are allowed for food or nutrients that make an insignificant contribution to the diet. Further, it would virtually prohibit health claims for descriptors and for diet and health relationships. Finally, it does not establish national uniformity in food labeling, an essential component of health information policy.

In contrast, S. 1505, introduced by Senator Hatch, provides an appropriate balance of congressional policy direction and FDA implementation of that policy. We would recommend adding to the core group of important nutrients in that bill for which labeling requirements should be established.

We would also recommend that the scope of uniformity provisions be clarified. As written, they appear to affect some labeling provisions that are essential local, while they do not fall within the province of Federal interest. This bill, with some modification, would be supported by GMA.

Returning to S. 1425, we believe Congress should set labeling policy and deadlines and not write regulations into law.

The health claims section of S. 1425 is drafted so narrowly as to make it useless. We strongly object to the approach embodied in the bill which would require that FDA pass judgment on each claim. Clearly, claims should be scientifically valid, truthful, not misleading, and fairly represent the overall nutrition contribution of a food in the diet. We also agree that claims should be strictly enforced by FDA.

Finally, the issue of national uniformity. We have a national food supply system, Mr. Chairman, with consumers on the West Coast eating the identical, nationally marketed food as their counterparts on the East Coast. Congress should establish the policy on what health information should be borne, be it nutrient content or other health information about a food.

Mr. Chairman, again, we believe that the time is right to establish a modernized and nationally uniform food labeling policy and look forward to working with the committee to achieve that objective.

[The prepared statement of Mr. Gardner follows:]

PREPARED STATEMENT OF SHERWIN GARDNER

Mr. Chairman and members of the Committee on Labor and Human Resources, I am Sherwin Gardner, Vice President for Science and Technology of the Grocery Manufacturers of America, Inc. (GMA). GMA is an 80 year old national trade association comprised of 139 companies that manufacture food and other products sold in retail grocery stores throughout the United States. GMA member companies employ over 2.3 million people and have annual sales in excess of $280 billion. We appreciate the opportunity to share our views on food labeling with the Committee.

The food labeling requirements that exist today have evolved over a period of more than 80 years, beginning with enactment of the 1906 Food and Drugs Act. These requirements, by and large, have served the public well, providing both health and economic protection. The most recent major policy change in food labeling requirements was the establishment of nutrition labeling regulations by FDA in January, 1973.

Several significant changes in nutrition labeling rules have been introduced or proposed by FDA since 1973:

> 1-Sodium content labeling: This was added as a component of nutrition labeling in July, 1985;
>
> 2-Cholesterol and fatty acid content: These requirements were proposed as additional mandatory components of nutrition labeling in November 1986;
>
> 3-Diet and health information: Conditions and criteria for labeling foods with this information were proposed in August, 1987.

These changes were introduced in response to developments in nutrition knowledge. Recognizing that research in the nutrition sciences has materially advanced at a rapid pace in the past 15 years, however, we agree that it is timely to review the kinds of nutritional and health related information that the federal government requires on packaged food labels. Indeed, the issuance of significant reports by the Surgeon General in 1988 and by the National Academy of Sciences in 1989 provides a valuable resource of material relating diet, nutrition and health that should help this review.

S. 1425, the Nutrition Labeling and Education Act of 1989, is timely in that it would establish new labeling requirements in recognition of scientific knowledge and in that it responds to the public interest in nutrition and health information. GMA agrees that there is a need to update labeling policies and requirements.

In that regard, GMA believes that several guiding principles should apply in the consideration of any new labeling requirements:

1-FDA is the appropriate organization to undertake a labeling review. Because nutrition labeling questions turn on matters of science, and because FDA is a scientifically based regulatory agency, it is well positioned to determine the specific details of any nutrition labeling rules. Further, it already has sufficient authority to take on this task.

2-Dietary, health and safety information must be based on the best and most current science available. Because scientific knowledge is continually changing, detailed labeling requirements should not be written into statute, but applied by FDA through its rulemaking procedures. Through oversight and resource appropriations, Congress can assure that labeling reflects contemporary knowledge and needs.

3-Labeling requirements should permit meaningful communication with consumers and also permit sufficient flexibility for manufacturers to comply efficiently with requirements. Newspapers, television, magazines, and radio all provide consumers with news about developments in nutrition knowledge; and government and private health institutions also provide such information. Food labeling complements this information and gives consumers a practical way to apply it. The FTC reports issued last August conclude that health information in food labeling is helpful to consumers. Our laws and regulations should establish appropriate rules that guide the way health and nutrition information is provided in labeling, but we should not close off an effective way of communicating that information.

4-There should be a nationally uniform set of labeling rules for nutrition and health information. More than ever, food labeling serves as an important way to effectively communicate health information to consumers. Indeed, the principal objective of the bill is to help consumers select foods that satisfy their personal health objectives. Valid health information is not a function of geography: Health knows no borders. Whatever the federal government establishes in the way of scientifically based labeling requirements should apply uniformly across the country.

In light of these principles, we would like to make the following comments concerning S. 1425, the Nutrition Labeling and Education Act of 1989.

In general, S. 1425 is unduly rigid and restrictive in its requirements for nutrient declarations; no exceptions are allowed for food or nutrients that make an insignificant contribution to the diet. Further, it would virtually prohibit health claims--for descriptors and for diet and health relationships. Finally, it does not establish national uniformity in food labeling, an essential component of health information policy.

In contrast S. 1505, the Food and Nutrition Labeling Act of 1989, provides an appropriate balance of Congressional policy direction and FDA implementation of that policy. We would recommend adding to the core group of important nutrients identified in the bill for which labeling requirements should be established. We would also recommend that the scope of uniformity provisions in S. 1505 be clarified. As written, they appear to affect some labeling provisions that are essentially local or that do not fall within the province of federal interest. This bill, with some modification, would be supported by GMA.

Returning to S. 1425, we believe Congress should set labeling policy and deadlines, and not, in effect, write regulations into law. The details of nutrition labeling decisions are best left to FDA since there are numerous technical details that require consideration. For example, although there is a provision which would exempt certain foods which do not contain significant amounts of all of the specified nutrients, there is no flexibility to allow a simplified labeling presentation for foods that contain insignificant amounts of most nutrients.

The health claims section of S. 1425 is drafted so narrowly as to make it useless. We strongly object to the approach embodied in the bill which would require that FDA pass judgment on each claim. Clearly, claims should be scientifically valid, truthful, not misleading, and fairly represent the overall nutrition contribution of a food in the diet; we also agree that claims should be strictly enforced by FDA. Toward this end, we respectfully recommend that FDA be directed to finish its rulemaking already begun in an appropriate time frame.

Finally, the issue of national uniformity. Mr. Chairman, health knows no borders. We have a national food supply system with consumers on the West Coast eating the identical, nationally marketed foods as their counterparts on the East Coast. Congress, in our judgment, should establish the policy on what health information the food should bear, be it nutrient content or other health information about a food.

Congress, not the states, should decide what diet and health information should be on food marketed in interstate commerce. Under this approach, however, FDA and the States should concurrently enforce identical health information requirements. The absence of labeling uniformity provisions makes this legislation unacceptable to GMA. Mr. Chairman, we believe that the time is right to establish a modernized, nationally uniform food labeling policy. We look forward to working with the committee to achieve that objective.

Senator **Metzenbaum**. As I understand the position of GMA, you don't support S. 1425, and you also have some difficulties with the Hatch bill. Is that correct?

Mr. **Gardner**. We believe our difficulties with the Hatch bill are more easily overcome than the difficulties we have with S. 1425, sir.

Senator **Metzenbaum**. Thank you. I just wanted to be certain I understood that.

Mr. George Burditt, of Burditt, Bowles and Radzius.

Mr. **Burditt**. Mr. Chairman, thank you very much for allowing me to appear this morning. Actually, I have on two hats; I'll try to wear them one at a time. The first one is for an association that isn't very often heard of in these halls. It is the Association of Food and Drug Officials, which is the professional association of the State and also Federal and local food and drug law enforcement officials. Now, quite obviously, I am an industry lawyer, not a member of that association. I am only an associate member. But the president of that association who this year is Edsel Moore of Kentucky wrote me a letter and asked if I would make a statement for him this morning. Let me read you two paragraphs, if I may, of his letter, because it will spell it out, and the letter is attached to my statement.

"Dear George, I understand that you are testifying at the hearing on Senator Metzenbaum's labeling bill. I hope you can work into your testimony some comments on the dedicated commitment of the Association of Food and Drug Officials to the concept of uniformity.

"Like all of my predecessors as president of AFDO, I am personally committed to support and encourage uniformity between the laws of the United States and the laws of the several States and among the laws of the several States. Indeed, AFDO's slogan, which appears on its banner and on this letterhead, is 'Uniformity through cooperation and communication.' "

Mr. Chairman, that position of uniformity by the Association of Food and Drug Officials is one which has been taken for many years. It is really based on three different interests, all of which coincide on this issue. The first is the interest of consumers, which the panel which preceded us so articulately presented. We have a very fluid society, and it is just as important for consumers in Washington, the State of Washington, or California, or New York, or Ohio, or Utah, or anywhere else to receive the same information. This can only be done if we have uniform legislation and regulation and policies.

The second reason for it is really the enforcement officials themselves can do a much better job and be much more effective if they are enforcing the same laws and regulations wherever they are.

And of course the third reason is that industry will be able to comply better if industry knows what is expected in one State, in all States, as well as in the United States, they can follow those lines. Unfortunately over the last few years, we have drifted off from that, and now industry is in a position where they are not sure what they have to do.

It is very important, and Mr. Chairman, you should be commended for your leadership in bringing this industry and the enforcement officials and consumers together in accomplishing that purpose through uniformity.

While I personally agree with all of those statements that I have just made on behalf of the Association of Food and Drug Officials, I did want this committee and particularly, Mr. Chairman, you to know that the association itself, which is dedicated officials who are devoting their lives to the protection of consumers, are very interested in this issue of uniformity.

Now let me take off that hat and put on my own hat, which is an industry lawyer. I represent firms who are facing these daily problems of how do they comply with the laws in their labeling requirements.

My comments, of course, I agree with virtually everything that these three gentlemen have said with that hat on, but let me just make two points. First of all, as to health claims, everybody believes, I think, that health claims of some kind should be allowed. The question is what quantum of proof do you need before you can make a health claim. The rules aren't very clear on that now, and they need to be made clear.

Your bill, Mr. Chairman, makes a significant step in that direction by saying "no significant scientific disagreement". I think that is certainly a basis for doing it. I would prefer, Mr. Chairman, that you take a positive approach to it; instead of saying "no significant disagreement", say that there is "significant scientific support" for the claim. That lets an industry who has a peer-reviewed, published study make a claim, and if the claim is not supported by that kind of evidence, it may not be made. There is never going to be consensus among the scientists in this industry. If I have ever learned anything in my 40 years of practicing food and drug laws, it is that scientists are as diverse on this as lawyers are. They are all over the lot. But if this committee can establish a positive rule of letting the industry decide whether there is adequate scientific support for a position, let them take it.

The other point that I would like to make goes to nutrition claims, and that is the position which was taken at the very outset, and certainly, Commissioner Young took—this is a very difficult area. There is great complexity, and it is important for consumers not to be misled by all kinds of different information, some of it irrelevant, on the labels. I suggest that this is such a fast-moving food technology field that the committee and consumers would be better served to provide a bill which would let FDA keep current as new developments come along, and they do come along—we don't even know in 1989 what is going to be necessary or desirable for consumers in 1990. I believe that an agency is better equipped to do that. I was in the Illinois legislature for 8 years, and it is hard for me to say that the legislature isn't omnipotent and omniscient on everything. But I really believe that in this particular circumstance that the legislative branch should yield to the administrative branch.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you very much, Mr. Burditt, and I appreciate also your submitting the comments on behalf of the association of State regulators. They call for uniformity; as you know, our bill provides for uniformity. So we interpret that as being neither forward nor backward support for our legislation, and we would be happy to include that gentleman's letter in the record if you want to have it in the record, but that is optional with you.

Mr. **Burditt**. I would appreciate it, Senator, and it is attached to my statement that has been submitted for the record.

Senator **Metzenbaum**. Thank you very much.

[The prepared statement of Mr. Burditt (with an attachment) follows:]

PREPARED STATEMENT OF GEORGE M. BURDITT

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony on the proposed "Nutrition Labeling and Education Act of 1989." This is one of the most important subjects facing our country, and all three branches of government. It is obviously presumptuous of me to thank you and congratulate you for entering this thicket, but after forty years of practicing law in the private sector, virtually exclusively in food and drug law, I join with many others in expressing our appreciation to you for undertaking consideration of the important subjects of nutrition labeling and education.

Today, I am wearing a couple of hats. First, I am honored to have been asked by E. Edsel Moore, this year's president of the Association of Food and Drug Officials to convey to you AFDO's dedicated commitment to the concept of uniformity. AFDO is the professional association of state, federal and local food and drug law enforcement officials. It was founded in 1897, and for almost 100 years, through its members individually and collectively, has promoted consumer protection by helping to assure the safety and proper labeling of the American food supply. For many years, AFDO's slogan has been "Uniformity Through Cooperation and Communication."

Attached to these comments is a copy of Mr. Moore's letter of October 20, 1989 to me asking me as an Associate Member of AFDO, to say a few words on AFDO's behalf on the issue of uniformity between federal and state laws, and among state laws. AFDO's position is based on three primary factors:

1. Consumers are the chief beneficiary of uniformity. With the development of multi-state urban complexes, and with the increasing mobility of the American populace, consumers are entitled to be able to count on the fact that their food is equally safe anywhere in the United States and that food packages will give them the same labeling wherever they live or move about the country.

2. Law enforcement is quicker and more certain if federal and state officials are enforcing uniform laws and regulations. The same ingredients should be prohibited or permitted everywhere in the country, the same names should be used for

products, the same descriptors should be allowed or disallowed, and the same labeling, particularly nutrition labeling, should be required or prohibited throughout the country.

3. Food manufacturers and labelers will know precisely what is expected of them. There will be no incentive to take advantage of different laws, regulations or enforcement policies between the federal government and an individual state, or among the states.

Of course hanging over all of this issue of uniformity like a black cloud is Europe's comprehensive move toward uniformity in 1992. Having experienced the detriments of diverse laws and regulations, and sensing the benefits of uniformity, the European Community is moving toward uniformity. How strange it would be if the United States, having enjoyed the benefits of uniformity, would suddenly go the other direction and balkanize our food labeling policies.

So, Mr. Chairman, in behalf of the Association of Food and Drug Officials, I urge uniformity in our labeling laws.

Now, Mr. Chairman, I would like to put on the hat that I have worn for many years, the hat of a lawyer who has represented various segments of the food industry almost full time since I was admitted to the bar. In that capacity, I have seen all kinds of fads come and go, have worked frequently with, and occasionally against, federal and state officials on labeling matters, have seen standards of identity totter from their pedestal of sanctity, have helped from the legal side in the development of foods for special segments of our population like infants and children and have seen the burgeoning use of descriptors like "low" and "light."

All of those issues, and of course many others need to be addressed by Congress, by the executive branch and perhaps eventually by the judicial branch. Since I have taught food and drug law at Northwestern University School of Law for about a quarter of a century, I hope you will excuse, Mr. Chairman, if I make some observations which may sound pedantic but they are also based on my personal experience.

Food technology is a rapidly advancing science to the great benefit of consumers. Statutory enactments and regulatory promulgations must be crafted to avoid freezing into our body of law rigid concepts which may soon be outmoded by advances in food science. With that important concept in mind, let me give some examples:

1. Standards

Standards of identity, quality and fill of container were authorized by the 1938 Act, and in general have provided consumers with assurance of nutrition, constant uniformity and appropriate labeling. The Hale Amendment facilitated the procedure for changing standards, but consumer groups and industry alike shudder at the prospect of trying to persuade FDA to make appropriate amendments. I urge the Congress to establish an Advisory Committee representing consumers, the food industry and the appropriate fields of science to assist FDA in making certain that standards are kept current with consumer needs and new developments in food technology. Concepts like the alternate make-procedure clause in most of the cheese standards, and the allowance of "safe and suitable" ingredients, permit industry to utilize scientific advances for the benefit of consumers.

2. Nutrition Labeling

Nutrition labeling obviously needs attention and, in my opinion, should be made mandatory. The key questions of course are what should be made mandatory, and who should establish the rules. Let me address those issues separately.

What should be made mandatory depends on the advice of experts in food technology, nutrition and food safety. It is a masterpiece of understatement to say that the experts are not in agreement at any point in time, and that their views change over a period of time. Therefore I urge the Congress to adopt broad policies enabling the experts within the federal agencies, in consultation with experts in academia and the food industry, to take advantage of developing technology and new discoveries, all to the benefit of consumers. The Advisory Committee could perform this function. That is the best way to determine what should be included in nutrition labeling.

Who should make those determinations is an equally important matter. From my eight years in the Illinois legislature, I am fully aware of the temptations of a legislator to make the decisions directly. Congress, because its range of responsibilities is far greater than a state legislatures', necessarily cannot be omniscient in all of the multitude of fields of legislative endeavor. Nor can legislative bodies usually act sufficiently quickly to utilize new developments. For that reason, I urge the Congress to set forth clear and unambiguous guidelines, but to leave implementation of the policies to the agencies, particularly FDA in the case of food safety, nutrition labeling and health messages.

Whoever determines what should be included in nutrition labeling should bear several concepts in mind:

a. Confusion will result if too technical or too much information is required.

b. The special nutritional needs of infants and children must be considered.

c. Future changes are inevitable as knowledge unfolds. For these reasons I urge Congress to designate FDA as the who to prescribe specific rules.

The question of who also involves the states. State legislatures should clearly not be involved in establishing nutrition labeling requirements, nor in my opinion should state administrative agencies. State lawmakers and administrators are subject to too many local pressures not necessarily beneficial to consumers. Therefore, Congress and FDA should set the requirements on nutrition labeling which must be followed throughout the country. An escape clause in case a state has a particular problem might be justified if the federal agency approves.

3. Health Messages

Health messages *must* be addressed by Congress and the agencies. We know far more now about the importance of food to health than we did when the Act was originally passed in 1938. Again the questions are *what* should be required and *who* should do the requiring. In addition, the quantum of proof necessary to justify a health message must be addressed.

Unfortunately, the scientists are not in agreement as to *what* should be required in the interest of consumer health and information. Mr. Chairman, I am sure your files are full of conflicting views, and views with differing emphasis, expressed by scientists of equal competence. These views are changing almost on a daily basis. No one can say that *what* appears to be appropriate in 1989 will continue to be appropriate even in 1990.

That of course leads directly to the question as to *who* should do the requiring. Under these circumstances, for Congress, and *a fortiori* for state legislatures, to do the requiring I submit would be a mistake. Rather, Congress should lay down clear rules for administrative agencies to follow as science develops. Experience tells us, however, that Congress should establish explicit time constraints on FDA, and should monitor FDA's implementation of the national mandate. And in the interest of consumers, to assist those members of industry who are seeking federal guidance, and above all in the interest of uniformity, please give FDA a short string! FDA can act expeditiously and efficiently, as they did in the tamper resistant packaging regulation, and rules on health messages are critically needed now.

As to the quantum of proof needed to justify a health claim, again I urge Congress to establish a guideline. But the guideline deserves careful attention. If the guideline is "consensus," I suggest that consumers may never get the benefit of health messages. At the other extreme, if health messages justified by a single in-house study are authorized, confusion will proliferate and consumer confusion will abound. I suggest that Congress prescribe a middle course, authorizing the approval of health messages based on peer-reviewed published studies. Explicit terms governing the quantum of proof necessary should be established by FDA, again with a tight time line.

In no area is national uniformity more important than in health messages. A health message supported by published, peer-reviewed studies is equally important to consumers in Ohio, Texas, Utah or any other state. The Congress should require uniformity on this issue.

4. Safety

Americans in every state are entitled to a uniform assurance of safety. To allow one state to impose special safety rules based on the whim of a local interest group is sheer folly. It implies that consumers in the other 49 states are not entitled to the same assurance of safety. It implies that the federal government and the other 49 states are not concerned about the safety of their citizens. It undermines consumer confidence in the Congress, state legislatures, federal and state administrative agencies, and indeed in our entire system of assuring the safety of the American food supply. With all of the effort that Congress, FDA, USDA and other federal agencies have expended to assure safety, it is unfortunate that dedicated but misguided local organizations are attempting to undermine public confidence in the national effort. Congress should put a peremptory end to such efforts by preempting any state or local safety labeling requirements which are in addition to or different than federal requirements.

Mr. Chairman, thank you for your courtesy in permitting me to testify before you today.

11/13/89

Association of Food and Drug Officials
P.O. BOX 3425, YORK, PA 17402-0425 (717) 757-2888

RECE[illegible] 89

October 20, 1989

Reply to: E. EDSEL MOORE
President
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George Burditt
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Dear George:

I understand that you are testifying at the hearing on Senator Metzenbaum's labeling bill. I hope you can work into your testimony some comments on the dedicated commitment of the Association of Food and Drug Officials to the concept of uniformity.

Like all of my predecessors as President of AFDO, I am personally committed to support and encourage uniformity between the laws of the United States and the laws of the several states, and among the laws of the several states. Indeed, AFDO's slogan, which appears on its banner and on this letterhead, is "Uniformity Through Cooperation and Communication."

AFDO may very well have comments on the substantive portions of the Metzenbaum bill, but at the hearing the point I would greatly appreciate your stressing is our interest in uniformity. You have been an associate member of AFDO for about as long as anyone has, and have been chairman of our Associate Member Committee three times. Your AFDO knowledge and experience clearly qualify you to advise Senator Metzenbaum and his colleagues as to the rationale for our interest in uniformity.

Sincerely,

E. Edsel Moore
President

EEM:ng

94TH ANNUAL CONFERENCE • JUNE 21-27, 1990 • DENVER, CO

Senator **Metzenbaum**. Let me ask a few questions—and I appreciate the comments of each of the witnesses.

Is there or is there not a feeling by many in the food industry that the whole question of labeling has gotten out-of-hand and that claims have gone too far? You have seen some of the claims here today.

Here is one that I got a kick out of. This is a Sara Lee strawberry cheesecake—looks pretty good, as a matter of fact—which says, "Surprise—only 200 calories per serving". That sounds pretty good. But then, if you look at the serving size information which is to be found elsewhere, it tells you there are 10 slices in the pie. So for the 200 calories, you get this little, tiny piece of strawberry cheesecake.

Now, frankly, I am not a big eater, but that is a pretty small serving size for the 200 calories. I just wonder whether you in your experience haven't seen a number of these misleading representations, and don't you feel there is a need for us to do something about that?

Mr. **Tipton**. Mr. Chairman, I would start the comment on that. I think everybody can find lots of examples of foods that their labeling could be improved. There is no question about that, and we are supportive of some changes in that regard.

I guess our major concern, however, is that we don't throw out the baby with the bath water, because we believe that there are a number of things that are currently good about our nutrition labeling scheme, and we want to make sure that those are maintained.

For example, we are concerned that lowfat cottage cheese—a standardized food, prescribed by the Food and Drug Administration, has been on the market for many, many years. It is a product that has about 1 gram of fat, has less than 5 milligrams of cholesterol, but it might be slightly high on the sodium side. We are concerned that under the stringent requirements of the legislation as you have drafted it that that nutritious food—and I think everybody would agree that it is a nutritious food—might not be able to stay on the market. We think that we may be going too far in trying to correct some of the problems that easily you can identify; certain areas, you can identify, but others you may need to take another look at.

Senator **Metzenbaum**. Well, Mr. Tipton, I think you are sort of making the case that I have made all along. For years, I have been saying to the industry, "Come, let us reason together and let us work this out," and we have spent untold number of hours doing that. I remember talking with Mr. George Cook of the Grocery Manufacturers Association and saying early on let's see if we can't work this out.

Now, we don't take any adamant position. We don't think we are very obdurate. We think the bill represents that fact. But I have to say to you that we are concerned about the very point you make. I think that not all parts of the industry, because as you well know, some segments of the industry have indicated a willingness to support our legislation and at the appropriate time, we will be discussing that publicly. I've been around this Senate long enough, and when I sat on the legislature many years ago and then subsequently as a lobbyist, I pretty well learned the best legislation comes about when those who are affected negotiate with those who are pushing the legislation. Both groups can then try to work out an efficacious manner of passing the bill. Otherwise, you win some and you lose some. And I know of no better example than what has occurred with respect to labor legislation. When we passed the Wagner Act originally, the pendulum was way over here. Then subsequently, we moved over to the Landrum-Griffin bill and the Taft-Hartley Act, and we moved in the opposite manner—probably somewhere in between is where the legislation should have been.

So we think that there is a pretty good sense of movement on this subject of food labeling today. We think the Food and Drug Administration recognizes that movement. We are aware of the fact that OMB is less than supportive of legislation. But I would say to the industry that the American people are demanding something, and if they don't get it this way, they'll go to the initiative. In my own State of Ohio the initiative is open, and I'm certain the initiative is open in other places in this country. We know that California has used the initiative quite often.

I would just say to you that we are not looking to do anything to harm the food industry. We are proud of the food industry in this country. But we think that there needs to be some movement on the part of the food industry to work with us, work with Senator Hatch as well as myself, to come up with a bill that you can live with, but that will meet the demands of the American people. Every poll that you take indicates the American people want to know more about what they are ingesting. They are concerned about their health, they are concerned about the food that they eat. And when the door is open, and when Senators are saying, "Come, let's work together," and there is a kind of obdurate position that, "No—we won't do it unless you preempt the matter of safety and preempt the California law in that area," we think you are mixing apples and oranges. The two are not in the same box. Unless you go forward to have food safety legislation as well as other safety aspects—pesticide safety—you can't expect this bill to solve the problem that some of you are experiencing in California. I can't say it much more strongly than that.

We think it is time to change your position. You might beat us this week, this month, this year, but we will be back, and so will the people of the country; they will not be slowed down; they are demanding action. Mr. Gardner.

Mr. GARDNER. If I could take just 2 minutes, Senator Metzenbaum, because you mentioned Mr. Cook, who happens to be my boss, I thought I might insert a word or two.

We have been willing to come and negotiate on food labeling, and indeed have done so and remain willing to do that. The question of health claims is one that was somewhat of a late-add to the issue agenda, and I don't think we have had an adequate opportunity to fully explore that——

Senator METZENBAUM. Excuse me. What question was the late-add, did you say?

Mr. GARDNER. Health claims. We have not had an adequate opportunity to explore that with your staff, and we look forward to doing that.

I do feel that on the question of uniformity—people can differ on this interpretation, sir—but we think there is an artificial distinction being made between food safety and nutrition labeling. The nutrition labeling bill is designed to be a health promotion measure, and so too are warnings that California and other States are interested in putting on food labels.

The whole question is the common denominator of health. The Cancer Society was here this morning to speak in behalf of the bill because they believe that nutrition information will help prevent some forms of cancer. If cancer is a cause for putting warnings on food, that is a health issue. So that is where we are coming from when we look at the bill that is designed to modernize food labeling requirements. That bill is a health bill, and we believe that all health information that appears on the label should be made nationally uniform in its requirement. That is the essence of our view on that. Thank you.

Mr. Cady. Senator, if I could just add a little bit to that, in my opening statement I talked about a national food policy, and I think it is time that we had a national food labeling policy.

I don't think we need patchwork legislation. If you have got two or three pieces of legislation that are addressing the same subject—and when I am talking about the same subject, I'm talking about the package that you have held up, or other packages—the consumer looks at that package as a totality. They don't break it out in terms of this is a nutrition labeling bill, this is a safety bill, this is a food warning bill; what am I going to do in California versus when I spend time elsewhere, like my mother with me in Virginia?

Why do we have to make this distinction? I have heard the arguments, and I have not been swayed at all by any of them that say that there should be a difference between nutritional labeling and food safety warnings. I think we need to take this time where we are right now to try to take care of this. If it is going to be thorough legislation, then it ought to be all-encompassing and address what is totally on that package and not half a loaf, which I think is where we are going right now.

Additionally, I think that there has to be some flexibility, sir, because as you know, you pass legislation now; as was mentioned earlier, 2or 3 years from now, things change, and we can't keep going back to the drawing board. I think we should not cut the regulatory process out. We have a regulatory system that has been developed over the years, and I think we ought to let it work.

As far as negotiations are concerned, sir, we stand ready to sit down and talk with you, along with the other food groups here, with the FDA, and with Senator Hatch. I think we ought to not discount his input into this bill and into this process, and I think we ought to sit down—we are willing to sit down and talk about it.

Senator Metzenbaum. We don't discount Senator Hatch's input.

Mr. Cady. I didn't say that. I said in the overall framework, I think we ought to make sure it is included in our discussions, sir.

Senator Metzenbaum. I think my staff is marrying some of his staff, they spend so much time back and forth together.

Mr. Cady. Well, that's good. [Laughter.]

Senator Metzenbaum. And his office is right across from mine, so we work together very closely.

Mr. **Cady**. Thank you. Thank you for your time, sir.

Senator **Metzenbaum**. I'd say to you that the door is open to you. We want to pass a bill, we expect to pass a bill. We are going to give it a full court press, and if you have some points that make some validity, we are willing to listen to them.

Mr. **Cady**. I'd like to just clarify two things, and I don't want to get into a controversy, but there was a statement made by a previous witness, and I'm not going to get into an argument about it, but I do want to make a point of clarification for the record.

Mr. Silverglade talked about 25 percent of cans are lead soldered, and children among others suffer blood poisoning from lead that leaks into food cans. My position on that, sir, is that that just is not true, and if we are going to discuss that type of thing here, we ought to be able to provide proof for what we're talking about and not just statements and walk away. Thank you, sir.

Senator **Metzenbaum**. Thank you very much, and certainly, Mr. Silverglade had the right to make his comment and you have the right to refute it, but we don't monitor what people say before the committee.

Mr. **Burditt**. Mr. Chairman, your statement that this is a fast-moving technological field with changes coming along all the time leads me to two conclusions. One is that the agencies ought to be making the decision to keep current with that. The second one is that certainly on food safety issues, the Congress ought to preempt the field so that when these changes come along, they will be taken care of nationally and not on an ad hoc basis from State to State, with 50 different rules. That just can't be handled by our country.

Senator **Metzenbaum**. Well, Mr. Burditt, you are aware of the fact that Dr. Young did put into the record the letter from OMB with reference to the matter of preemption——

Mr. **Burditt**. Yes.

Senator **Metzenbaum** [continuing]. And making it very clear the administration does not support preemption. Now, I've got enough of a problem getting this bill through the Congress without trying to find a way to take on the President as well, and I think that we have to be realistic. It is nice to say preemption, but the administration says categorically that they do not support preemption.

Mr. **Gardner**. That letter, Mr. Chairman, is quite a bit older than the President's current position. I suggest that that has been revised by events. The President's statement on pesticide residues that was just issued 10 days ago took a position in favor of preemption of States. So I think that that letter is a little out-of-date, sir.

Senator **Metzenbaum**. I think his position is that if a standard is set up that he favors preemption. But we are not setting up a standard in that respect. But we'll be happy to explore all these issues with you promptly. Yesterday was too late. Let's move forward.

[Additional statements and material submitted for the record follow:]

PREPARED STATEMENT OF THE AMERICAN ACADEMY OF PEDIATRICS

The American Academy of Pediatrics strongly favors nutrition labeling of as many foods as possible, including foods for children under the age of two. Parents need information to make wise food choices for their children. Food labels offer an excellent opportunity to have such information available at the time of purchase.

The labels should list the content of protein, fat, carbohydrates, (the energy nutrients) as a percent of calories in the food, in addition to identifying the grams per serving. The major constituents of fats, namely saturated, monosaturated, and polyunsaturated fatty acids should be stated. Any additive or preservative that may contribute calories to the food should be identified on the label. When there is more than one serving per container, the number of servings should be clearly displayed.

A second issue of concern to the Academy is the use of health messages or health claims on foods. We oppose the placement of health messages or health related claims on foods. Health messages based on clinical data obtained from the adult population could be inappropriate, even harmful for children. The nutritional needs of children differ, sometimes markedly from those of adults. However, once infants graduate from a diet of baby foods, the foods they are served are generally the same as what other family members are eating. The proposals allowing generic health claims do not reflect this reality.

In addition, health messages often highlight only one ingredient in a food item, without providing full disclosure of the nutritional value of other ingredients. Nutrition and health are too complex and multifaceted to be reduced to one line cues.

We are also concerned that promotional competition will lead to abuses which could have adverse effects on consumers, particularly children. Examples include publication of dietary information before the information is scientifically validated and advertisement of foods fortified with nutrients that may not be beneficial.

Comprehensive labeling of foods is an important, useful vehicle for educating the public. Labels on as many foods as possible provide an excellent opportunity for food manufacturers to inform rather than persuade consumers of the value of their product.

November 7, 1989

PREPARED STATEMENT OF THE SNACK FOOD ASSOCIATION

The Snack Food Association ("SFA" or the "Association") is pleased to present its views for the Record on S. 1425, The Nutrition Labeling and Education Act of 1989. The Association is a non-profit international trade association representing over 480 domestic manufacturers and suppliers involved in the making and distribution of more than 95 percent of the snacks made from vegetables, grains, fruits, meats, and nuts consumed in the United States. Although there are corporate giants in our industry, the majority of our member companies are moderately small, family-owned, regional businesses.

The Association supports nutrition labeling. Over 90 percent of our snack products (based on a percentage of sales) carry a nutrition panel according to the FDA's Food Label & Package Survey (1988). SFA supports current efforts to modernize the nutrition panel. The Association believes the nutrition label should provide nutrient information that is useful, scientifically accurate and responsible. The Association believes that the current format is complex, outdated and too rigid.

S. 1425 requires that the labels of packaged food products subject to the jurisdiction of the Food and Drug Administration disclcse the amount of total fat, saturated fat, unsaturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, total protein, dietary fiber, total calories, fat calories and saturated fat calories per serving or other customarily used unit of measure, which may not be appropriate for all foods. For example, dietary fiber would not be expected to be labeled in such products as cheese and milk, but would be appropriate for cereals and vegetables. Thus some degree of nutrition labeling flexibility is desirable.

The Association supports mandated labeling for "macro-nutrients" (i.e., calories, protein, total fat and carbohydrates) when combined with uniformity of health, safety and nutrition information. SFA supports voluntary labeling of "micro-nutrients" (i.e., vitamins, and other nutrients).

We feel that the multiple labeling of fat, which would be required if this bill were passed, would be confusing and unnecessary. Multiple labeling would result from the two methods required in the bill itself, which are, the labeling of the number of calories derived from fat and saturated fat per serving and the grams of fat, saturated fat and unsaturated fat per serving, plus the requirement under current regulations that the percentage of calories per serving derived from fat be disclosed. We support the requirement of labeling grams per serving of total fat only. The latter method (grams per serving) is the most useful to track the total daily intake of fat.

Revisions to the nutrition label should not include the percentage of calories from fat or saturated fat. Such labeling can only be used relative to the total dietary intake of fat in planning complete diets. This type of labeling shifts the emphasis from the total diet to individual foods and facilitates the inappropriate designation of "good foods and bad foods." Certain foods, such as lean meats, poultry, and cheese contain a substantial portion of their total energy as fat. However, these foods, representing two of the four basic food groups, are important contributors of other nutrients essential to a balanced diet. Reduction in the intake of these products because of a desire not to eat any foods containing more than 30 percent of calories from fat, could result in micronutrient deficiencies. Additionally, percent of calories cannot be added, but grams of fat may be added to reflect the total daily intake of fat.

S.1425 presents an attempt, among other things, to better educate the consumer regarding consumption of saturated and unsaturated fatty acids. Yet, meat, poultry and dairy products, which contribute approximately 60 percent of the saturated fats in the total diet, are not covered by this legislation. The Snack Food Association believes, in the absence of a consensus of opinion regarding the benefits and detriments of the consumption of specific fatty acids, that the information required by this bill overemphasizes the fat content of packaged food products and is too complicated for the average consumer. While food manufacturers welcome a knowledgeable and fully informed consumer, we are alarmed by the potential distortion in buying decisions made possible by a lack of consumer education on the labeling issues addressed in S. 1425.

We believe a major goal of the legislation is to simplify the nutrition label and provide information most important to the health of consumers. The inclusion of complex carbohydrates, sugar and fiber declarations for all foods covered by this Act would provide little useful information. Moreover, the link between chronic disease and these nutrients is scientifically less definitive. Unless a claim is made regarding these nutrients, we do not support their mandatory labeling.

We do not agree with the requirement in the bill that the serving size be expressed in terms of a "common household measure". This is unnecessarily restrictive and could result, in some instances, in serving size information which is not useful. Instead, it should be expressed in a common, convenient measure appropriate to the food and suitable for consumption as part of a meal. For example, a serving of chips can be determined by specifying the actual number of chips in a serving (i.e., one serving equals 16 chips). Clearly, a cup of chips, although a common household measure, is inappropriate. The chip count allows consumers to compare "like foods" and to visualize the actual serving of the snack product.

With respect to the "nutrient content" and "disease prevention claims" provisions of the bill, SFA believes that health claims and product descriptors are a viable and useful methods for manufacturers to convey information to consumers about their products. SFA supports the establishment, by a certain date, of health claim guidelines by the FDA through the federal regulatory process. We support the reasonable standardization and definition of product descriptors. In addition, care should be taken not to confuse or link product descriptors with health claims. Product descriptors provide factual content information, they do not claim health or medical benefits. Both the health claims guidelines and definitions of product descriptors would have to be supported by sound scientific bases.

The "Claims" section of the bill as currently written, would have a major detrimental effect on the development of more nutritious foods. Food producers are not going to develop more healthful products if they can't use terms to market the characteristics of the product that they've been able to improve. For example, if a company develops a product that is significantly lower in fat, calories, or cholesterol, it couldn't use product descriptors on the label unless all the nutritional components of the product were deemed not to "increase the risk of disease or health related condition which is diet related."

In effect, this means that if a manufacturer cannot develop a "perfect" nutritional product, then it cannot make any statement on the label regarding the positive nutritional value of any aspect of the product. For example, if a company makes a one-third less oil potato chip that is also cholesterol-free , it would not be permitted to describe those characteristics if the Secretary deemed the chips to be moderately high in sodium. The fact that a form of a product (normally high in fat, in this example) is available with less oil and no cholesterol is important information for the consumer to know.

Finally, SFA would like to comment on the matter of national uniformity and label standardization. Presently, state governments are asserting authority to establish food labeling requirements for FDA-regulated products that are more restrictive than the federal requirements. This authority threatens the existence of a uniform food label. To provide consumers with helpful information about the content and nutritional value of a food product, a national standard for food labeling must be established and the authority for governing the food label must lie with the FDA. This authority should mirror USDA's statutory authority for USDA-regulated products.

The Association believes that consumers and food manufacturers support the standardization of labeling laws on a national basis. SFA supports labeling standards that are national in scope and uniform in application. We oppose the continuation of the existence of state laws that threaten to disrupt the distribution of food products in interstate commerce.

The "uniformity" provisions of this bill are limited. They do not preempt all state requirements on food labeling matters now addressed in the FFDCA. Furthermore, the bill permits state enforcement of its provisions. Enforcement by State Attorneys General will lead to varying interpretations from state to state. Food manufacturers can comply with consistent application of the federal regulations by FDA, but not with conflicting, state-by-state requirements for food labeling.

Health recognizes no borders. We have a national food supply system with consumers on the West Coast eating identical, nationally-marketed foods as their counterparts on the East Coast. Congress, not the states, should decide what diet and health information should be on food marketed in interstate commerce.

The Snack Food Association supports efforts to determine what information is truly important to an informed food purchasing decision, and how best to present that information. We ask that in this process, Congress remain sensitive to the ramifications to industry in providing the desired information. As a general proposition, we urge that, before enacting any specific labeling requirements for the food industry, Congress thoroughly examine the extent of this industry's and other food manufacturers' cooperation in consumer education and in voluntary informational labeling.

We appreciate this opportunity to share our views concerning this important legislation and look forward to working together in providing information consumers view as important in making informed purchase decisions.

FOOD LABELING CHAOS: THE CASE FOR REFORM

A Report By

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July, 1989

EXECUTIVE SUMMARY

Health authorities have reached a consensus that our diet contributes heavily to the leading causes of death in this country today -- cardiovascular diseases and cancer. The Surgeon General, the National Academy of Sciences, the Department of Health and Human Services and numerous other authorities all agree that by changing our diets, we can sharply reduce our risks of these diseases which take the lives of hundreds of thousands Americans each year and cost tens of billions of dollars annually.

The changes Americans must make in their diets are clear. Health authorities advise that we consume less fat, saturated fat, cholesterol, and sodium, and that we eat more of the foods that are rich in starch and dietary fiber. *Surveys taken by FDA and others show that a majority of Americans know about much of this advice and are striving to follow it. However, FDA surveys also suggest that current food labeling practices and regulatory policies thwart efforts by consumers to actually follow this advice when choosing particular foods.*

The Problem

Most labeling problems that prevent consumers from following the advice of health authorities to modify their diets fall into three areas:

1. Lack of Useful Nutrition Information

Only about half of all food labels disclose nutrition information, and those that do so are not required to list many of the nutrients that authorities consider most critical: saturated fat, cholesterol, starch, and fiber. Furthermore, the current labeling format does not enable consumers to quickly grasp the significance of the information listed.

2. Misleading Nutrition and Health Claims

Manufacturers use nutrition and health claims on the front of food packages to attract shoppers. These claims often are based on nutritionally-obsolete regulatory standards, or are not defined by regulation at all. Major offenders include claims such as "100% vegetable oil," "high fiber," "light" and "natural," as well as claims that a food can actually help reduce the risk of specific diseases.

3. Incomplete, Unclear Ingredient Information

Contrary to what most people believe, ingredient lists are not always required to list the exact ingredients of a food. Furthermore, the quantities of major ingredients are not disclosed. In addition, the information disclosed is often provided in formats that are hard to read.

Regulatory and Legislative Failure

Over the last decade, consumer and health groups have called upon the Food and Drug Administration, the Department of Agriculture (which regulates egg, meat, and poultry product labeling) and the Bureau of Alcohol, Tobacco and Firearms (which regulates alcoholic beverage labeling) to address these problems. In some areas, the agencies have failed to keep labeling regulations up to date with nutritional findings; in others, they have promulgated regulations that are inconsistent with each other; in others still, they have completely neglected requests for reform. Recently, however, even FDA Commissioner Frank Young, M.D., has conceded that current food labels are "almost unintelligible" and that labeling policies are in drastic need of change.

During this period of regulatory neglect, Congress has failed to pass comprehensive food labeling reform legislation. Narrower labeling bills have been introduced in recent sessions of Congress and comprehensive food labeling legislation may be considered by Congress in 1989.

Recommendations

Reform in these major areas of food labeling are needed. The human and economic benefits from these reforms -- additional years of productive life and reduced medical expenses -- dwarf the implementation costs to industry and government. These recommendations thus make sense economically as well as from the standpoint of public health.

1. Mandatory Nutrition Information, Improved Format

- Require labels of all processed foods to disclose the amounts of key nutrients related to major public health problems: calories, total fat, saturated fat, cholesterol, sodium, total carbohydrate, starch, sugars, and dietary fiber.

- Appoint a broadly representative advisory committee to recommend to FDA a labeling format that will clearly highlight a food's strengths and weaknesses in these key nutrients, enabling consumers to use the information in choosing a typical daily diet.

2. Standards for Labeling Claims

- Require regulatory agencies to set standards for all nutrition and health claims.

- For health claims, require that claims be supported by a consensus of scientific opinion, that significant nutritional drawbacks be disclosed, and that the diet-disease relationship be recognized by the Public Health Service as a significant problem for the average American.

3. Improved Ingredient Labeling

- Require that all ingredients, as well as percentages of major ingredients, be listed on all foods in a format recommended by the advisory committee.*

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* This report was prepared by Charles P. Mitchell, Staff Attorney; Bruce Silverglade, Director of Legal Affairs; and Bonnie F. Liebman, Director of Nutrition.

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PART I: INTRODUCTION

Diet-related disease takes an enormous toll on our society. Last year, The Surgeon General's Report on Nutrition and Health noted that dietary factors play a "prominent role in five of the ten leading causes of death for Americans," including the top two: cardiovascular disease and cancer. Based on scientific evidence that the Surgeon General called "even more impressive than that for tobacco and health" (at the time of the Surgeon General's 1964 landmark report on smoking), his new report concludes that:

> For the two out of three adult Americans who do not smoke and do not drink excessively, one personal choice seems to influence long-term health prospects more than any other: what we eat.[1]

Expert Consensus

This impressive scientific evidence has produced a consensus among health authorities that American diets are too high in fat, saturated fat, cholesterol, sodium, and calories, and too low in complex carbohydrates, starch, and fiber. Furthermore, health authorities agree that the typical American diet increases the risks of coronary heart disease, high blood pressure, stroke, diabetes, obesity, and some forms of cancer.

Fortunately, these same authorities have also reached a consensus that Americans can cut their risks of these diseases by eating less fat, saturated fat, cholesterol, and sodium, and by consuming more of the foods that are rich in complex carbohydrates. Since 1980, the U.S. Department of Health and Human Services (HHS) and Department of Agriculture (USDA) have recommended that Americans "avoid too much" fat, saturated fat, cholesterol, sodium, and sugar and "eat foods with adequate starch and fiber," in Dietary Guidelines for Americans, the official nutritional advice of the federal government.[2] Similar recommendations have been made by leading health organizations such as the American Heart Association[3] and the American Cancer Society.[4] These recommendations have most recently been reaffirmed by the Surgeon General's Report, by the National Academy of Sciences/National Research Council's (NAS/NRC) 1988 report, Designing Foods, and by the NAS/NRC's 1989 report, Diet and Health.[5]

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[1] U.S. Department of Health and Human Services, Public Health Service, The Surgeon General's Report on Nutrition and Health (1988), "Message from the Surgeon General" and p. 1.

[2] HHS and USDA, Nutrition and Your Health: Dietary Guidelines for Americans (Home and Garden Bulletin No. 232, Second Edition, 1985).

Labeling Chaos

Unfortunately, conscientious efforts by millions of Americans to follow this advice are often stymied by inadequate disclosures and misleading claims on food labels.

- Nutrition information (usually optional under current law) appears on only about half of processed foods. Those foods that are labeled generally omit information on critical nutrients such as fiber, cholesterol, and saturated fat, and are cluttered with information about several nutrients that do not play a major role in diet-related disease.

- Popular, seductive claims such as "lite" and "natural" are used deceptively on food labels and mislead consumers as to the nutritional value of foods.

- Nutrition and ingredient information is displayed in a confusing format that does not highlight the information that public health authorities consider most important.

As a result, consumers find it difficult to shop for nutritious foods and to follow the advice of health authorities to modify their diets.

Regulatory Failure

Traditionally, the Food and Drug Administration (FDA) has had primary responsibility for regulating food labeling. However, during the 1980s, as the public health consensus on diet and disease solidified, FDA abdicated this responsibility. During this period, the agency issued only one major new regulation (sodium labeling) designed to update the nutrition label.

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[3] American Heart Association, Dietary Guidelines for Healthy American Adults: A Statement for Physicians and Health Professionals By the Nutrition Committee, American Heart Association (1988), printed in Circulation, Vol. 77, No. 3 (1988).

[4] American Cancer Society, Nutrition and Cancer: Cause and Prevention, An American Cancer Society Special Report (1984), printed in Ca-A Cancer Journal for Clinicians, Vol. 34, No. 2 (1984).

[5] Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, Diet and Health: Implications for Reducing Chronic Disease Risk (National Academy Press, 1989); Committee on Technological Options to Improve the Nutritional Attributes of Animal Products, Board on Agriculture, National Research Council, Designing Foods (National Academy Press, 1988).

Furthermore, enforcement actions against misleading nutrition claims decreased. Numerous calls by public health organizations, consumer groups, state government officials, and even some members of the food industry for enforcement action against deceptive label claims, and for regulations improving the quality of label information, have fallen upon deaf ears at FDA. From 1984 to 1988, FDA denied, ignored, or failed to act on at least eight citizens petitions calling for improvements in food labeling. In the face of this record, even Food and Drug Commissioner Frank E. Young, M.D., who in 1987 had previously indicated a lack of interest by stating that "no one has died from a food label,"[6] conceded in late 1988 that today's food label is "a relic" and that food labeling is now the "dominant issue" facing FDA, "an issue whose time has come."[7] In 1989, Commissioner Young stated that labels today are "almost unintelligible."[8]

Requests for health-oriented reforms of labeling policies at USDA, which regulates meat, poultry, and egg labeling, have faced a similar fate. For example:

- USDA requires nutrition labeling only if labeling claims are made and even then does not require all of the same information that FDA requires on nutrition labels.[9]

- USDA exempted ground beef from its policy on "lean" meat labeling in response to pressure from beef producers.[10]

- The Department adopted a standard inconsistent with the FDA's informal policy on "lite" claims.[11]

A 1988 report by the General Accounting Office (GAO) noted a number of problems and inconsistencies in USDA and FDA food labeling regulations and policies, and concluded that "[m]any of these are generic to federal food information rulemaking."[12]

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[6] "Young Announces Increased FDA Emphasis on Imported Foods," Food Chemical News (Feb. 16, 1987), p. 45.

[7] Food Chemical News (Dec. 5, 1988), pp. 2, 24.

[8] Sugarman, "Keeping the Faith: FDA Commissioner Frank Young Talks About Grapes, Glory, and God," Washington Post (Apr. 12, 1989), pp. E1, E14.

[9] USDA, Food Safety and Inspection Service, Standards and Labeling Policy Book (1986), pp. 98-99.

[10] Compare USDA, Food Safety and Inspection Service's Labeling Policy Memo 070A (1986) with its Labeling Policy Memo 070B (1987).

[11] USDA, Food Safety and Inspection Service, Labeling Policy Memo 071A (1986).

Consumer Attitudes

Surveys show that consumers are well aware of the major dietary changes that experts recommend, and are striving to follow these recommendations. According to a 1984 Roper poll, consumers look to food labels more than to any other source of nutrition information.[13] Other survey findings, however, indicate that, although the public is generally aware of expert recommendations, it cannot rely on today's food labels to make specific decisions. Consequently, consumers may understand which *nutrients* they should seek and which they should avoid, but are not so sure which *particular foods* contain desirable or undesirable amounts of these nutrients.

FDA's conclusions from a recent survey of consumers' perceptions, behavior, and knowledge about nutrition are particularly telling in suggesting priorities for labeling reform. FDA believes that:

- The public has "quite impressive" general knowledge and understanding about dietary risk factors for heart disease;
- "[T]he cognitive gains taking place in all segments of the population with respect to diet/disease relationships are providing the basis for meaningful changes in food choices, marketing strategies and government policies."
- *However, "[i]t is very possible to have a highly concerned public with respect to diet and health issues which is not very knowledgeable about detailed nutrition facts that could help them to effectively implement these concerns."*[14]

Those observations suggest that what consumers most need is labeling reforms that will allow them to put their general knowledge to work by enabling them to judge the nutritional value of particular foods.

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[12] GAO, Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, Food Marketing: Frozen Pizza Cheese -- Representative of Broader Food Labeling Issues (GAO/RCED-88-70, Mar. 1988), p. 28.

[13] Roper Organization, Roper Report 84-9 (1984).

[14] Levy, Ostrove, Guthrie, and Heimbach, Division of Consumer Studies, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Recent Trends in Beliefs About Diet/Disease Relationships: Results of the 1979-1988 FDA Health and Diet Surveys, presented at FDA/USDA Food Editor Conference (Dec. 1-2, 1988).

A Challenge for Congress

Several bills were introduced in the 100th Congress to address particular food labeling problems, but not one was enacted. One bill (H.R. 2148), to reform deceptive labeling of foods containing highly-saturated tropical vegetable oils, gained 170 cosponsors in the House of Representatives. One obstacle to passage of the bill was that key members of Congress believed that any food labeling legislation should be more comprehensive.

Thus, the time is ripe for comprehensive action. The public health community agrees that Americans need to change their diets in order to reduce their risks of diet-related disease. Americans are trying hard, but finding it difficult, to follow that advice. The challenge to legislators and regulators is to provide consumers with the information they need to follow this advice and to prevent deceptive claims that can mislead.

This report suggests how legislators and regulators should confront these challenges. It addresses three basic questions:

- What nutrition information should be required on food labels, and in what format should that information be presented?
- What needs to be done to prevent deceptive claims from appearing on the labels of foods?
- What label information about ingredients should be required to help consumers follow the advice of public health authorities?

To answer each of these questions, this report summarizes each of the major diet-related health problems, examines the current labeling regulations that make it difficult for consumers to make desired dietary changes, and outlines recommendations for reform. Lastly, it explains why the economic benefits of food labeling reform far outweigh the anticipated costs of such reform.

PART II: NUTRITION LABELING

A. NUTRITION LABELING: WHAT INFORMATION SHOULD BE REQUIRED?

The Problem

The HHS/USDA Dietary Guidelines recommends the following dietary changes:

- Avoid too much fat, saturated fat, cholesterol, sugar, and sodium, and
- Eat foods with adequate starch and fiber.[15]

The Surgeon General's Report echoes those recommendations, stating that these changes should be "issues for most people" in their diets (children under two years of age are a notable exception).[16] The National Research Council's Diet and Health specifically recommends that Americans:

- Reduce total fat to no more than 30% of calories, saturated fat to less than 10% of calories, cholesterol to 300 milligrams daily, and salt to 6 grams (2.4 grams sodium) daily.
- Increase complex carbohydrate consumption by eating five or more daily servings of fruits and vegetables and six or more daily servings of breads, cereals, and legumes.[17]

In addition, the Department of HHS's "Health Objectives for the Nation" state that by 1990:

- "70% of adults should be able to identify the major foods which are low in fat content, low in sodium content, high in calories, high in sugars, [and] good sources of fiber."
- "The labels of all packaged foods should contain useful calorie and nutrient information to enable consumers to select diets that promote and protect good health. Similar information should be displayed where non-packaged

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[15] Dietary Guidelines (see note 2), p. 3.

[16] Surgeon General's Report (see note 1), pp. 8-14.

[17] Diet and Health (see note 5), pp. 1-17 through 1-20.

foods are obtained or purchased."[18]

The Surgeon General's Report states that "labeling offers opportunities to inform people about the nutrient content of foods so as to facilitate dietary choices most conducive to health." Therefore, food manufacturers "should be encouraged to make full use of nutrition labels," stating fat, cholesterol, and sodium content (among other nutrients), and -- to the degree permitted by analytical methods -- information on saturated fats and fiber in the foods that normally contain them.[19]

FDA's current nutrition labeling regulations fall far short of meeting these recommendations. Even the food packages that have nutrition labeling are not required to list five of the very nutrients that the Dietary Guidelines, the Surgeon General's Report, or Diet and Health emphasize: saturated fat, cholesterol, sugar, starch, and fiber. Ironically, labels must list three different B-vitamins that abound in our food supply and are not linked to any significant health problems in this country.

The grocery industry predicted in 1975 that 85% of companies would use nutrition labeling "in the near future,"[20] but as of 1986, nutrition labeling appeared on foods making up only about 55% of grocery store sales of FDA-regulated processed foods, and only 43% of total sales of USDA-regulated processed meat and poultry products. The percentage of FDA-regulated foods that carried nutrition labeling rose moderately from 1978 to 1982 but was stagnant from 1982 to 1986.[21] Even giants such as Nabisco and Safeway fail to provide nutrition labeling on some of their foods.

Regulatory and Legislative Status

FDA issued nutrition labeling regulations in 1973.[22] Many public comments urged making nutrition labeling mandatory for all foods, but the agency declined this option, saying that the food industry lacked the data and analytical methods needed to determine the nutrient content of some products. Instead, FDA required nutrition labeling only when producers voluntarily add a nutrient (e.g., a vitamin or mineral) or make a nutrition claim (e.g., "low in sodium"). The agency found that such labeling was necessary to prevent deception about the food's "overall" nutritional value. FDA required the nutrition label to disclose per serving – a size determined by the manufacturer – the number of calories, grams of total fat, protein, and carbohydrate, and percentages of the U.S. Recommended Daily Allowances for protein, five vitamins, iron and calcium.

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[18] Office of Disease Prevention and Health Promotion, Public Health Service, HHS, The 1990 Health Objectives for the Nation: A Midcourse Review (1986), pp. 221-23.

[19] Surgeon General's Report, p. 18.

[20] Jacobson, The Complete Eater's Digest and Nutrition Scoreboard (Anchor Press/Doubleday, 1985), p. 24.

[21] Division of Consumer Studies, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Status of Nutrition Labeling on Processed Foods: 1986 - Food Labeling and Packaging Survey (1986).

[22] Federal Register, Vol. 38, p. 2125 (1973). The current regulations appear in Code of Federal Regulations, Title 21, § 101.9 (1988).

Over 16 years, few improvements have been made. Some key events include:

- A 1979 FDA/USDA policy review again found public support for mandatory nutrition labeling, but neither agency has ever proposed the necessary regulations. The agencies also claimed that their legal authority to mandate such labeling was unclear, and said that they would seek or support legislation to clarify this authority.[23] They have yet to do so.

- Only one nutrient, sodium, has been added to the required items on nutrition labels.[24] This change, effective in 1985, also allows food labels to disclose sodium content without providing any other nutrition labeling.

- In 1986, FDA proposed a cholesterol labeling rule that would define terms such as "low cholesterol" but would not require that all food labels disclose how much cholesterol is in a food.[25] The White House Office of Management and Budget has delayed final publication of this rule.

A bill introduced this year by Representative Moakley (H.R. 2051) would require fat, saturated fat, cholesterol, and sodium disclosure on labels of all foods that contain any fat, cholesterol, or sodium. Representative Neal Smith has introduced a bill (H.R. 1712) to require sodium and potassium disclosure on all foods containing more than 35 milligrams sodium per serving.

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[23] Federal Register, Vol. 44, pp. 75,990; 76,001 (1979).

[24] Federal Register, Vol. 49, p. 15,510 (1984). The regulations appear in the Code of Federal Regulations, Title 21, §§ 101.9(c)(8)(i), 101.13, and 105.69 (1988).

[25] Federal Register, Vol. 51, p. 42,584 (1986).

Recommended Reform

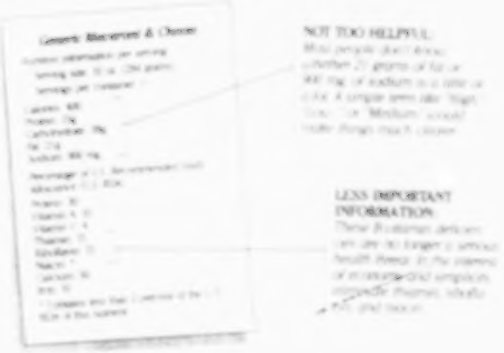
- Require nutrition information on all food labels, whether regulated by FDA or by USDA.

- Modify the contents of the nutrition label to reflect advice in the Dietary Guidelines, the Surgeon General's Report, and Diet and Health, by adding saturated fat, cholesterol, sugar, starch, and fiber disclosures, and by rescinding requirements for disclosure of B-vitamins.

B. NUTRITION LABELING FORMAT

The Problem

When nutrition information is provided, it is not labeled prominently, clearly, and understandably. Typically, it is listed in small print on the back or side label. The label seems designed for nutrition researchers or government inspectors, instead of busy shoppers who need to grasp key nutritional features at a glance. Information about fat, carbohydrates, and sodium is expressed only in grams or milligrams, which are difficult for consumers to interpret, especially considering that the U.S. does not use the metric system. Many people cannot tell whether these quantities represent desirable or undesirable levels of the nutrient in question.



NOT TOO HELPFUL: *Most people don't know whether 21 grams of fat or 900 mg of sodium is a little or a lot. A simple term like "High," "Low," or "Medium" would make things much clearer.*

LESS IMPORTANT INFORMATION: *These B-vitamin deficiencies are no longer a serious health threat. In the interest of [illegible] and simpler [illegible] thiamin, riboflavin, and niacin.*

Current nutrition labels can be confusing.

Regulatory Status

In their 1979 labeling policy review, FDA and USDA noted these and other criticisms, but felt that consensus for specific changes was lacking [36]. FDA initiated research and set up a task force to formulate options for reform. Congress intervened in

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[36] Federal Register, Vol. 44, p. [illegible]

1981 by instructing FDA in a report accompanying the agency's fiscal year 1982 appropriations bill to conduct a cost-benefit analysis before promulgating any changes in labeling regulations. Funding for the effort was ultimately eliminated by the agency in 1983 and FDA abandoned the effort. The role foreseen for USDA in 1979 was to support FDA's research effort. With the demise of FDA's project, USDA's activities in this area ceased, too.

Recommended Reforms

- The nutrition label should highlight information about the nutrients that are emphasized by the Dietary Guidelines, the Surgeon General's Report, and Diet and Health, making it easier for consumers to follow the experts' advice. The label should be designed so that people can readily see the nutrition information, understand it, and relate it to their total diets.

- An advisory committee representing health professionals, consumers, industry, and federal health agencies should conduct research and consumer surveys, then recommend to FDA and USDA how the required nutrition information should be displayed.

- The *front* label could contain a synopsis of information on a few key nutrients (e.g., fat, sodium, fiber, and calories) perhaps using traffic light color-coded symbols -- red for high fat, green for low sodium, etc.

- The more extensive *side or back label* could state whether the numbers and percentages listed represent high, medium, or low levels of each nutrient listed, and display optional disclosures of vitamins and minerals separately from mandatory information. Diagrams might be used to illustrate the portions of a food's total calories that come from fat, saturated fat, carbohydrate, and protein.

IMPROVED LABEL I

Nutrition Information Per Serving

Serving Size	12 OZ
Servings per Container	1

Calories	320
Total Fat	High (10 g)
Cholesterol-Raising Fat	Medium (4 g)
Cholesterol	Low (10 mg)
Sodium	High (700 mg)
Starch	High (35 g)
Dietary Fiber	Low (1 g)
Sugar	Low (3 g)

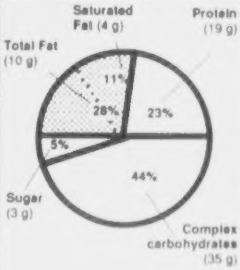
Other Nutrients and % of USRDA

Protein	High (40%)
Vitamin A	High (160%)
Vitamin C	(0%)
Calcium	Low (5%)
Iron	Medium (15%)

IMPROVED LABEL II

NUTRIENTS PER 12 OZ SERVING

320 Calories



Sodium	700 mg
Dietary Fiber	1 g

Rating of Daily Allowance

Vitamin A	Excellent
Vitamin C	Poor
Calcium	Fair
Iron	Good

These labels are examples of how the content and format of the nutrition label could be improved.

PART III: STOPPING DECEPTIVE LABELING CLAIMS

A. FAT, SATURATED FAT, AND CHOLESTEROL CLAIMS

The Problem

Health authorities agree that most Americans should eat less fat, saturated fat, and cholesterol. Diets high in saturated fat and cholesterol raise blood cholesterol levels, increasing the risk of heart attack. Diets high in total fat may increase the risk of obesity and certain cancers.

- The Dietary Guidelines recommends avoiding "Too Much Fat, Saturated Fat, and Cholesterol" and choosing "low-fat" milk products and "lean" meat and poultry.[27]

- The Surgeon General,[28] the National Cancer Institute (NCI) and the National Heart, Lung, and Blood Institute (NHLBI),[29] the National Institutes of Health Consensus Panel on Lowering Blood Cholesterol to Prevent Heart Disease,[30] the American Heart Association,[31] and the American Cancer Society[32] have all urged the public to eat less fat in order to reduce their risks of heart disease or cancer.

FDA surveys show sharp increases between 1983 and 1988 in the percentage of consumers who link fat to heart disease (from 29% to 55%), cholesterol to heart disease (26% to 45%), and fat to cancer (12% to 25%). In 1988, 57% of FDA's respondents said they were eating less fat (up from 50% in 1986), and 22% said they were eating less

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[27] Dietary Guidelines (see note 2), pp. 15-16.

[28] Surgeon General's Report (see note 1), pp. 8-11.

[29] NCI and NHLBI, Public Health Service, HHS, Eating for Life (NIH Publication No. 88-3000, 1988).

[30] "Lowering Blood Cholesterol to Prevent Heart Disease," Journal of the American Medical Association, Vol. 253, No. 14, pp. 2080-86 (1985).

[31] Dietary Guidelines for Healthy American Adults (see note 3), p. 1.

[32] Nutrition and Cancer (see note 4), p. 6.

> However, a USDA exception allows "lean" or "extra lean" claims on ground beef that crosses state lines after labeling even if the meat contains up to 22 1/2% fat.[39] Other exceptions allow companies to label foods that are not low in fat as "lean" if the word is included in the brand name of the product.

Regulatory and Legislative Status

In 1987, CSPI petitioned FDA to prohibit the use of the term "low fat" on 2 percent milk. FDA concedes that 2% milk which has 5 grams fat per serving and contains 18% fat by dry weight, does not meet the agency's own view of "low fat," which as used in retail shelf-labeling programs, is defined as no more than 2 grams fat per serving and less than 10% fat by dry weight.[40] Nonetheless, the agency says it cannot devote the resources necessary to respond to the petition. However, the Senate Appropriations Committee report for the fiscal 1989 FDA appropriations bill directs FDA to initiate rulemaking to define "low fat" during fiscal 1989.[41]

After eight years of delay, FDA proposed definitions for cholesterol claims in late 1986.[42] This proposal, however, would allow "low cholesterol" and "cholesterol free" claims even on foods high in saturated fat and total fat. It also would not prevent companies from declaring smaller serving sizes in order to qualify for these claims (e.g., one cookie). FDA still has not issued a final rule.

In 1986, USDA granted CSPI's petition to set 10% and 5% fat limits for "lean" and "extra lean" claims and to require percentage fat labeling with these claims. In 1987, however, the meat industry persuaded USDA to make an exception for ground beef,[43] the most commonly consumed form of beef and the single largest source of fat in the cholesterol (double the percentage in 1986) in order to prevent heart disease.[33]

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[39] USDA, Food Safety and Inspection Service, Labeling Policy Memo 070B (1987).

[40] "Definitions for Use in Shelf Label Programs Outlined by FDA," Food Chemical News (Dec. 12, 1988), pp. 32-33.

[41] U.S. Senate, Committee on Appropriations, Report to Accompany H.R. 4784, Agriculture, Rural Development and Related Agencies Appropriation Bill, 1989, Senate Report 100-389, 100th Congress, 2d Session (1988), p. 132.

[42] See note 25.

[43] See note 39.

Further progress in this area, however, is hindered by many misleading label claims regarding fat and cholesterol. FDA has left such claims unregulated, or regulated them in a manner that makes it difficult for people to identify foods low in fat and cholesterol. For example:

- "Low fat" -- FDA does not regulate this claim except for milk and some other dairy foods. Moreover, the regulations allow the "low fat" claim on milk containing 2% fat by weight[34] even though the National Heart, Lung, and Blood Institute[35] and the American Heart Association[36] recommend that adults maintaining a "low fat" diet avoid all milk containing more than 1% fat.

- "Low in saturated fat" -- FDA has no regulation defining the term, and has not proposed one.

- "No cholesterol" -- This claim appears on some foods that contain no cholesterol but do contain saturated fats that raise blood cholesterol levels. FDA's 1988 survey found strong evidence that such claims can be misleading: only 35% of consumers knew that a "cholesterol free" food might be either high or low in saturated fat, and 42% incorrectly believed such a food would have to be low in saturated fat. FDA remarked that consumers appeared to erroneously believe that "cholesterol free" claims mean that a food is low in saturated fat and therefore is healthful.[37] Ironically, the agency's own proposed cholesterol labeling rule would allow "cholesterol free" claims regardless of saturated fat content.[38]

- "Lean" and "Extra Lean" -- For most meat and poultry products, these claims signify foods with no more than 10% and 5% fat, respectively.

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[33] Recent Trends (see note 14).

[34] Code of Federal Regulations, Title 21, §131.135 (1988).

[35] NHLBI, Cholesterol Treatment Recommendations for Adults: Highlights of 1987 Report, National Cholesterol Education Program Adult Treatment Panel (1987 draft), Table 5.

[36] American Heart Association, The American Heart Association Diet: An Eating Plan for Healthy Americans (1985).

[37] Recent Trends (see note 14).

[38] See note 25.

American diet.[44]

Identical bills introduced in 1989 by Senator Harkin (S. 623) and Representative Glickman (H.R. 1441) would require nutrition labeling, including fat, saturated fat, and cholesterol content, on all food labels that make cholesterol claims.

Recommended Reform

- Allow these claims only if:
  - The claim is valid for a typical serving of the food; and
  - The food does not pose offsetting health risks due to other nutrients in the food.
- Require FDA and USDA to promptly establish uniform rules, defining the terms used and requiring appropriate disclosures. The following definitions should be considered:
  - "Low fat"/ "Low saturated fat": Allow milk to be called "low fat" only if it is 1% or less fat by weight.
  - "No cholesterol"/ "Cholesterol free": Since both cholesterol and saturated fat can raise blood cholesterol, allow these claims only if the food also qualifies as low in saturated fat. If the food does not qualify as low in total fat, require that this fact be disclosed adjacent to the claim (e.g., "Cholesterol-free bran muffins - Not low in Fat").
  - "Low cholesterol": Restrict this claim to foods that are also low in saturated fat, and require a disclosure if foods are not also low in total fat. To make sure that manufacturers cannot unreasonably shrink serving sizes to qualify as "low cholesterol," limit the amount of cholesterol both per serving (e.g., 20 milligrams) and per 100 calories (e.g., 10 mg).
  - "Reduced cholesterol"/"Lower fat"/"Less" comparisons: Require a significant reduction (perhaps one third) from the *industry-wide average* in the food for which the product substitutes -- not from "a leading brand." Require an explanation of the basis for the claim (e.g., "Reduced cholesterol egg nog: 60 milligrams cholesterol, one-third less than regular egg nog").

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[44] Block, Dresser, Hartman, and Carroll, "Nutrient Sources in the American Diet: Quantitative Data from the NHANES II Survey. II. Macronutrients and Fats," American Journal of Epidemiology Vol. 122, No. 1 (1985), pp. 27, 32, Table 4.

- "Lean" and "extra lean": Apply current USDA policies, limiting "lean" claims to processed meat with less than 10% fat and "extra lean" claims to processed meats with less than 5% fat, to all poultry and meats, including ground beef. Allow these terms in the product name or in a separate claim only if total fat is less than 10% or 5%, respectively, and fat percentage is labeled (e.g., "Lean Ham, 8% fat by weight").

B. "VEGETABLE SHORTENING" CLAIMS FOR HIGHLY SATURATED OILS

The Problem

Some "vegetable" fats -- palm oil, coconut oil, and palm kernel oil -- pose special problems because they raise blood cholesterol levels even more than animal fats. The Dietary Guidelines specifically recommends limiting the intake of foods containing palm and coconut oils.[45] Dietary studies confirm that such oils, which contain between 51% and 92% saturated fat, significantly raise blood cholesterol levels.[46] Lard, by contrast, is 41% saturated fat.

Many people who seek to follow the advice of health experts to consume less saturated fat mistakenly believe that all vegetable fats are less saturated than animal fats. In fact, FDA's 1988 survey found that only 29% of consumers knew that products containing vegetable oil could be either high or low in saturated fat, while 42% mistakenly believed that such products are all low in saturated fat, and 24% were not sure.[47]

Some food companies have exploited that misconception by placing "100% vegetable shortening" and similar claims on front labels of foods made with palm, palm kernel or coconut oils. The problem is compounded because FDA permits the ingredient label to state that a food "contains one or more of the following oils" and to list all oils that the company might use in that product without identifying which are actually present in the individual package.[48] This practice serves the convenience of producers who switch oils based on seasonal costs, but disserves people who are trying to reduce their intake of saturated fat.

Regulatory and Legislative Status

FDA has avoided grappling with deceptive "vegetable shortening" labeling. CSPI petitioned FDA in 1986 to require that the same portion of any food label that makes a "vegetable shortening" claim also disclose the names of all oils that are actually used in the product (e.g., "contains coconut oil") and identify palm, palm kernel and coconut oils as "a saturated fat." CSPI also requested FDA to require each of these oils to be identified as "a saturated fat" in all ingredient lists and to prohibit "and/or" ingredient labeling. FDA, however, chose to treat this petition as a "comment" on the agency's cholesterol labeling proposal. That proposal was published three months after the petition was submitted yet did not mention the problem of deceptive "vegetable shortening" claims. As mentioned earlier in this report, FDA has not finalized that proposal.

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[45] Dietary Guidelines (see note 2), p. 16.

[46] Mattson and Grundy, "Comparison of effects of dietary saturated, monounsaturated, and polyunsaturated fatty acids on plasma lipids and lipoproteins in man," Journal of Lipid Research Vol. 26 (1985), p. 194.

[47] Recent Trends (see note 14).

[48] Code of Federal Regulations Title 21, §101.4(b)(14) (1988).

Despite strong bipartisan support for reform of "vegetable shortening" labeling, Congress, too, has not solved the problem. In 1987, bills to enact provisions similar to those in CSPI's petition were introduced by Senator Harkin and Representative Glickman. The House bill gained co-sponsorship of two-thirds of the relevant subcommittee, a majority of the full committee, and nearly 40% of the entire House. However, the legislation mistakenly came to be viewed as a domestic trade protection bill, partly as a result of aggressive support by the American Soybean Association and misleading public relations tactics employed by Malaysian palm oil interests. Consequently, both houses failed to take any further action on the bills during the 100th Congress.

Legislation introduced by Senator Harkin and Congressman Glickman in 1989 (S. 623/H.R. 1441) would require all labels that include "vegetable" oil or shortening claims, or that list fats and oils in "and/or" fashion, to include nutrition labeling including fat, saturated fat, and cholesterol content.

Recommended Reform

- Require that all vegetable shortening claims on the label of foods containing palm, palm kernel or coconut oils be immediately and conspicuously followed by this disclosure, unless the food as a whole is low in saturated fat as determined by FDA:

> "Contains [palm, palm kernel, coconut (whichever are actually used)] oil, a saturated fat."

Such claims should also trigger full nutrition labeling, including disclosure of saturated fat content.

- Require that the ingredient list specifically name each fat or oil that is actually used in the food.

- Require that the ingredient list identify palm oil, palm kernel oil, coconut oil, butter, lard, and beef tallow as "a saturated fat," unless the food as a whole is low in saturated fat as determined by FDA.

C. FIBER CLAIMS

The Problem

It is the consensus of health authorities that Americans should consume more dietary fiber in order to reduce the risk of several major health problems:

- The Dietary Guidelines recommends that people "Eat Foods With Adequate Starch and Fiber" in order to reduce symptoms of chronic constipation, diverticular disease, some types of "irritable bowel," and to perhaps reduce the risk of colon cancer.[49]

- The American Cancer Society[50] and the National Cancer Institute (NCI)[51] advocate adding fiber to the diet in order to reduce the risk of colon and rectal cancer.

- NCI[52] and the Federation of American Societies for Experimental Biology (FASEB)[53] recommend that Americans double their consumption of dietary fiber, from 10 to 20-30 (but not more than 35) grams of fiber daily obtained from a variety of foods.

Consumers understand the importance of fiber. In FDA's surveys, the percentage of consumers who believe that consuming more fiber may help prevent cancer tripled between 1984 and 1988,[54] and nearly 60% of respondents in annual Harris surveys conducted for the Prevention Research Center claim that they "try a lot" to eat enough fiber.[55] But consumers have trouble recognizing many good sources of fiber. Although many foods would qualify, such as fresh fruits and vegetables, whole grain products, and beans or peas, only breakfast cereals were named by a majority of consumers as good sources of fiber in FDA's 1986 survey.[56]

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[49] Dietary Guidelines (see note 2), pp. 17-18.

[50] Nutrition and Cancer (see note 4), p. 6.

[51] NCI, National Institutes of Health, Public Health Service, HHS, Diet, Nutrition & Cancer Prevention: The Good News (NIH Publication No. 87-2878, 1986), p. 4.

[52] Ibid.

[53] Life Sciences Research Office, FASEB, Physiological Effects and Health Consequences of Dietary Fiber (1987), pp. ix, 162-63.

[54] Recent Trends (see note 14).

[55] Prevention Magazine, The Prevention Index '89, Summary Report: A Report Card on the Nation's Health (Rodale Press, 1989), p. 17.

Further progress by consumers to increase their fiber consumption is thwarted by deceptive labeling claims:

- "High fiber," "fiber rich," and similar claims have appeared on foods with as little as 2 grams of fiber per serving, although foods which contain more than 10 grams per serving are available in supermarkets.
- "Highest fiber" and other claims of superiority have appeared on foods that have no more fiber, or only trivially more, than similar products. Some such comparisons are only to so-called "leading brands;"
- Some labels that have claimed "more fiber" than other foods have based the comparison on crude fiber analysis, a method which measures only a fraction of biologically significant fiber and has been made obsolete by modern dietary fiber analysis methods.
- Some food labels that have made fiber claims have not disclosed the amount of fiber in the product.

Regulatory Status

FDA has failed to act on a June, 1987, CSPI petition that asked the agency to include fiber information on all nutrition labels.

FDA also has failed to respond to a request in the CSPI petition to take enforcement action against deceptive fiber claims. FDA regulations generally prohibit claiming that a food is a significant source of a nutrient unless it contains at least 10% of the U.S. Recommended Daily Allowance (RDA) for that nutrient.[57]

While no RDA has been set for fiber, similar standards could be based on the NCI and FASEB recommendations for fiber consumption(i.e., 10% of 20 grams, or 2 grams, to make a significant source claim). Indeed, FDA used this very approach in developing standards for grocery store shelf labeling programs.

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[56] Heimbach, Division of Consumer Studies, Food and Drug Administration, Changing Public Beliefs About Diet and Health (Oct. 1986), Table 11.

[57] Code of Federal Regulations Title 21, §101.9(c)(7)(v) (1988).

FDA requires that a food which is a:

- "Source" of fiber must contain at least 2 grams of total dietary fiber per serving;
- "Good source" of fiber must contain at least 5 grams;
- "Excellent source" of fiber must contain at least 8 grams.[58]

Unfortunately, FDA has failed to apply these standards to claims on food labels. As a result, misleading claims abound.

Recommended Reform

• FDA should consider using the same standards it adopted for shelf labeling to regulate fiber claims that appear on food labels. For fiber superiority claims, the food should have at least 2 grams more dietary fiber per serving than the food or foods to which it is compared.

• FDA should require the amount of dietary fiber per typical serving to be disclosed on the nutrition labels of all packaged foods (See Part I-A).

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[58] "Definitions for Use in Shelf Label Programs" (see note 40), p. 33.

D. "LIGHT" AND "LITE"

The Problem

Many companies claim their foods are "light" or "lite" in order to attract consumers who are striving to reduce their intake of calories, fat, sodium, or sugar. Consumers usually interpret "light" to mean that one or more of these nutrients (depending on the kind of food) has been substantially reduced. In a 1982 FDA survey, for example, 70% of consumers who had seen "light" claims on labels thought the claim meant lower in calories, 15% thought lower in sugar, 11% lower in salt or sodium, 6% lower in fat or cholesterol, and 6% lower in weight.[59]

In today's food market, however, "light" and "lite" have no consistent meaning because federal agencies with labeling jurisdiction have failed to effectively control use of the terms.

- Many "lite" claims go entirely unexplained -- leading consumers to believe that the product is lower in calories, fat, or sodium -- when the claim may merely mean the food is lighter in texture, flavor, or color. For example, the term "Extra Light" on the label of "Extra Light Bertolli Olive Oil," refers to taste, not calorie or fat content.

- Other times, the food purports to be "light" merely because the suggested serving is smaller. For example, Sara Lee's "Light Classics" cheesecake actually has no fewer calories and more fat than an equal-sized serving of the company's regular cheesecake. The "Light" cheesecake is lower in fat and calories only if a smaller serving is eaten.

Regulatory and Legislative Status

Ad hoc, inconsistent federal standards apply to "lite" claims for meats, alcoholic beverages, and most other processed foods. Even when agencies interpret "light" to refer to the same quality -- fewer calories -- their standards disagree. "Light" meat and poultry products must have at least one-quarter fewer calories, other "light" processed foods at least a third fewer, and alcoholic beverages (according to a proposed regulation) only a fifth fewer.

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[59] Division of Consumer Studies, Food and Drug Administration, "Familiarity With and Perceived Meaning of 'Light'," (Telephone interview survey of 1,000 adults in a national probability sample, conducted Oct.-Nov. 1982).

- In 1977, FDA adopted a regulation defining the term "reduced calorie." The agency interprets this rule as requiring a one-third calorie reduction for "lite" claims that mean "fewer calories." This interpretation, however, is not enforced. Moreover, the agency imposes no restrictions on "lite" claims based on other nutrients such as sodium and fat.[60]

- In 1985, CSPI petitioned USDA to limit "lite" claims to meat and poultry products containing at least one-third fewer calories, one-third less fat, or one-third less sodium than the average for that type of food, and to require "full" nutrition labeling on all "lite" foods. USDA instead required a minimum reduction of only one-quarter, and full nutrition labeling only if "lite" appears in the product name.[61]

- In 1988, the Bureau of Alcohol, Tobacco, and Firearms (BATF) proposed yet another inconsistent standard. It would allow "lite" labeling on alcoholic beverages if calories are reduced by only 20%. BATF's rule, not yet final, would even allow "lite" claims for any lesser calorie reduction, so long as the label disclosed the calorie contents of the "lite" product and the producer's (or a competitor's) regular product.[62]

Representative Cooper has introduced a bill (H.R. 514) to require that food products achieve a one-third reduction in fat, sodium, or calories to qualify for a "light" claim. The bill also would require that the label state the basis for the claim (e.g., "1/3 less fat"). A one-third reduction in calories and a similar label statement would be required for "light" claims on alcoholic beverages. The same one-third reduction would also be required to support "Reduced calorie," "Reduced fat," and "Reduced sodium" claims.

The Senate Appropriations Committee identified "lite" as a "commonly used vague, and misleading" labeling claim. The committee directed FDA to initiate rulemaking aimed at restricting "lite" claims during the fiscal year that ends in September, 1989.[63]

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[60] FDA has interpreted Code of Federal Regulations Title 21, §105.66(d) (1988), which requires a one-third calorie reduction for "reduced calorie" claims, as applying to "light" when it refers to calorie content.

[61] USDA, Food Safety and Inspection Service, Labeling Policy Memo 071A (1986).

[62] Federal Register, Vol. 53, p. 22,678 (1988).

[63] Senate Report 100-390 (see note 41), p. 132.

Recommended Reform

- FDA, USDA and BATF should establish uniform standards for "light" labeling of all foods and beverages, using the standards set out in the Cooper bill. These agencies should require that the factual basis for the claim be explained immediately following each use of "light" (e.g., "Lite Cheesecake -- 33 1/3% less fat than the average cheesecake;" "Schludwiller Light. One-third fewer calories than our regular beer").

- Full nutrition labeling should also be required on all "light" foods, to disclose their strengths and weaknesses in the nutrients that the producer has chosen not to highlight.

E. "NATURAL"

The Problem

In surveys cited in a 1979 Federal Trade Commission (FTC) report, 63% of consumers believed that "natural" foods are more nutritious than other foods and 65% said that they would pay a 10% premium for "natural" food.[64]

"Natural" claims currently on food labels often do not fulfill the public's expectations about the meaning of "natural."

- Some so-called "natural" foods contain highly-processed or artificial ingredients.

- Other products use the word "natural" to refer to a particular ingredient or characteristic, misleadingly conveying the impression that the entire product is "natural." For example, "Mrs. Smith's Natural Juice Apple Streusel" contains partially hydrogenated oils, artificial color, artificial flavor, and preservatives. "Country Time Lemonade Flavor Drink Mix, Natural Lemon Flavor with other Natural Flavors" boasts "100% Natural Flavors" but contains artificial color.

In 1981, FTC staff recommended that a "natural" food be defined as one which contains no artificial ingredients and is only minimally processed. The agency, however, failed to finalize a regulation. It is possible that natural claims have lost credibility because they have gone unregulated and have been so widely abused for such a long period of time. In 1989, recent pre-testing of consumer survey questions by FDA indicates that consumers do not perceive these claims as meaningful descriptors and attach little credibility to them.[65]

Regulatory and Legislative Status

"Natural" labeling on most processed foods is poorly regulated. USDA, which regulates only meat and poultry products, since 1982 has limited "natural" labeling to those foods that contain no artificial ingredients and are minimally processed.[66] However, USDA's "natural" labeling policy may be changed or scrapped because of a recent controversy concerning claims by some producers that their meats are free of pesticide or animal drug residues.[67] FDA restricts the use of the word "natural" only with regard to the term "natural *flavor*," (the flavor must be derived from some animal or plant).[68]

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[64] Federal Trade Commission, Staff Report and Recommendations: Proposed Trade Regulation Rule on Food Advertising (16 CFR Part 437, Phase I) (Sept. 25, 1978), p. 216-219.

[65] Telephone conversation between Alan Levy, Ph.D., Division of Consumer Studies, FDA, and Charles Mitchell, CSPI, (July 10, 1989). Dr. Levy indicates that the actual survey results may be available this fall.

Efforts to improve FDA's regulation of "natural" claims have been abandoned. During the 1978-79 policy review, FDA and USDA said they would await the outcome of a then-pending rulemaking on "natural" claims by the Federal Trade Commission (FTC), which regulates food advertising.[69] After the Reagan administration took office, the FTC withdrew its proposed regulation. While USDA eventually adopted its current standard modeled on the FTC's proposal, FDA took no further action.

The Senate Appropriations Committee directed FDA to initiate rulemaking aimed at restricting "natural" claims during fiscal 1989.[70]

Recommended Reform

- Restrict "natural" claims to foods that do not contain artificial ingredients and are minimally processed.

- Require that the food name or label claim that includes the word "natural" be immediately followed by the statement "Contains no artificial ingredients and is only minimally processed". This statement will ensure that consumers understand what "natural" means and not assume mistakenly that the food is contaminant-free, organic, or nutritionally superior to other foods.

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[66] USDA, Food Safety and Inspection Service, Labeling Policy Memo 55 (1982).

[67] Charlier, "Raisers of 'Natural' Cattle Fear Losing Market Niche," Wall Street Journal (May 17, 1989), pp. B1, B3.

[68] Code of Federal Regulations Title 21, §101.22 (1988).

[69] Federal Register Vol. 44, pp. 76,012-13 (1979).

[70] Senate Report 100-390 (see note 41), p. 132.

F. HEALTH CLAIMS

The Problem

Increasingly, food manufacturers seek to exploit the public's knowledge about the relationship between diet and disease, by openly claiming that their products will help reduce the risks of specific diseases. These "health" claims go beyond traditional "nutrition" claims, such as "low calorie" or "high fiber," by asserting the supposed *health consequences* of a food's particular nutritional characteristics. Ideally, health claims could represent a new means of informing consumers about nutrition and health. In practice, however, they have proliferated without adequate controls and, in many instances, they have served to mislead an increasingly health conscious public.

For example, Kellogg, in 1984, began claiming that All-Bran cereal, when eaten as part of a low fat, high fiber diet, could help reduce the risk of certain forms of cancer. That statement was approved by the National Cancer Institute. Unfortunately, Kellogg soon added a similar claim to the label of Cracklin' Oat Bran cereal, which contains four grams of fat per serving -- quite high for a breakfast cereal. Similarly, Kellogg labeled Rice Krispies as fortified with extra "energy-releasing" B-vitamins that would "help you get through a busy day." The FDA and the New York State Attorney's General office found that the label claims misleadingly implied that Rice Krispies actually provided energy in a way that consumers could directly experience after eating the product. Kellogg agreed to modify the label.

Health claims can also deceive consumers by:

- Highlighting a characteristic which may help prevent a disease, but remaining silent about another that promotes the same -- or another -- disease. Campbell Soup has boasted that its low-fat, low-cholesterol, soups can help reduce the risk of some forms of heart disease without disclosing that the soups' high sodium content may raise blood pressure and thus increase the risk of heart disease. Similarly, whole milk cartons note that milk is high in calcium and that calcium-rich foods may help reduce the risk of osteoporosis, but do not mention that the high fat content of whole milk could increase risks of heart disease, cancer, and obesity.

- Highlighting diet-disease relationships that are irrelevant for most Americans. Land O' Lakes butter labels claimed that the product's vitamin A helps keep skin soft and smooth, but skin problems related to vitamin A result only from severe deficiencies that are almost unheard of in the United States.

- Exaggerating the potential benefits from a particular food. Quaker Oats ads implied that eating oatmeal daily could reduce blood cholesterol by nearly

10%, although Quaker's own supporting studies showed that most of the reduction came from switching to a low fat, low cholesterol diet rather than from eating oats. Quaker's success sparked the development of new oat bran products, many containing only trivial amounts of oat bran.

Regulatory Status

The history of the health claims controversy has essentially been characterized by the White House Office of Management and Budget (OMB) overruling well-meaning proposals by the FDA. As a result, public health policies have suffered at the expense of ideological, political and economic goals.

FDA enforced a regulation completely prohibiting health claims[71] until the All-Bran claims appeared in 1984. The agency's response was initially stymied because another Public Health Service agency, NCI, had expressly endorsed the claims. Eventually, the OMB interceded and coerced FDA to propose rescinding the 81-year-old prohibition and to permit such claims so long as they were "truthful and non-misleading" and met other related criteria.[72]

The 1987 proposal, however, did not require that health claims be reviewed by Public Health Service agencies, as had been done by Kellogg with its first health claims for All-Bran. Nor did FDA require that the claims be based upon a consensus of scientific opinion, specify whether foods with nutritional drawbacks could carry health claims, or specify that the claims would be limited to areas of diet that posed true health problems for the average consumer. FDA also announced that it would treat this proposal as the agency's interim policy pending adoption of the final rule.[73] As a result of these deficiencies, FDA's proposal drew practically unanimous opposition from the public health, medical and consumer communities.

After considering the public comments, FDA drafted a significantly different final regulation. On August 31, 1988, FDA asked the OMB to approve a regulation that would limit health claims to five areas of health where a consensus of scientific opinion supported a connection between diet and disease. These included sodium and heart disease, fats and heart disease, fats and cancer, fiber and cancer, and calcium and osteoporosis. The draft called for FDA to develop model label messages and health summaries specifying how and in what contexts companies could use the messages. Manufacturers could still devise messages of their own in other areas of health, but at the risk of FDA regulatory action.[74]

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[71] Code of Federal Regulations Title 21, §101.9(i)(1) (1988).

[72] U.S. House of Representatives, Committee on Government Operations, Disease-Specific Health Claims on Food Labels: An Unhealthy Idea, House of Representatives Report 100-561, 100th Congress, 2d Session (1988), pp. 22-33.

[73] Federal Register Vol. 52, pp. 28,843-49 (1987).

The draft final rule addressed many criticisms of the proposal, but OMB resisted it as too restrictive. In February 1989, more than 15 major health organizations including the American Medical Association, the American Institute of Nutrition, the American Heart Association, and CSPI met with OMB officials, urging either that health claims be prohibited entirely or that FDA's final rule be approved, with the exception that food companies not be allowed to devise their own health claims.[75] However, Dr. Fred Shank, FDA's acting director for foods, recently conceded that due to OMB's resistance, "this rule is going nowhere as currently written."[76] Indeed, in recently stating that the health claims issue is among several the agency plans to address in a new food labeling initiative in the near future,[77] Commissioner Young effectively admitted that the agency is back to square one.

Recommended reform

OMB should permit FDA to:

- Allow health claims only for those diet-disease relationships that are recognized by a broad scientific consensus (reflected in such publications such as the Dietary Guidelines or the Surgeon General's Report) as being major diet-related problems for the American population.

- Allow health claims only if they are based on model language that FDA has developed or other language that FDA has reviewed.

- Prohibit health claims on any label of a food containing ingredients or properties which may offset the claimed disease-preventing benefits by promoting either the same disease or some other disease.

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[74] Department of HHS, Public Health Service, FDA, Memorandum - Subject: Public Health Message Final Rule (Aug. 31, 1988).

[75] "OMB Opposed to FDA Endorsing Wording of Health Claims," Food Chemical News (Mar. 6, 1989), pp. 56-59.

[76] "Federal 'Default' Leaves Health Claims Action to States: CSPI," Food Chemical News (July 10, 1989), pp. 19, 24.

[77] "Action Against Psyllium-Containing Cereal Urged by CIBA," Food Chemical News (July 10, 1989), pp. 34, 36.

- Allow health claims only if one typical serving eaten daily will provide the benefit claimed.

- Require that the label include a disclosure, as prominent as the claim itself, that the claim is only valid if the food is consumed as part of a total dietary pattern and that consumers should refer to the full nutrition labeling provided.

PART IV: LABELING OF INGREDIENTS

The Problem

To follow the advice of health authorities concerning diet and disease, consumers need complete information about food and beverage ingredients. Consumers need to know about the presence of sugar (which goes by many names), salt and other forms of sodium, and vegetable oils that are high in saturated fat. Millions, too, need specific ingredient information to follow special doctor-prescribed diets or to avoid allergic reactions. Others wish to avoid ingredients that have been linked with cancer, such as saccharin and artificial colorings.

Unfortunately, food labels often lack essential ingredient information.

- Some foods are subject to FDA "standards of identity." These standards prescribe mandatory and optional ingredients for foods called by a certain name (e.g., "peanut butter," "low fat milk"), but require only the optional ingredients to be listed on the label. Mandatory ingredients are required to be listed only in the Code of Federal Regulations.[78]

- Labels must list ingredients in order of predominance, but only rarely must list actual quantities or percentages.[79] Thus, it is impossible to know the amounts of desirable and undesirable ingredients. For example, some breakfast cereals contain as much as 50% sugar, but do not reveal this fact. Total sugar content is especially hard to evaluate when several sugars -- "sugar," "dextrose," "high fructose corn syrup," etc. -- are scattered through the ingredient list.

- Ingredient labels frequently list vegetable oils in an "and/or" fashion without revealing which of the oils is actually present in the particular package. This is a particularly important health issue when the oil is a major ingredient and possible ingredients include one or more highly saturated oils.

- When a food covered by a "standard of identity" is an ingredient of other foods, it may be listed only by that standard name, without listing its sub-ingredients, such as milk or eggs, that may be of crucial concern to some consumers.

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[78] Title 21, Parts 130-69 (1988).

[79] Code of Federal Regulations, Title 21, §§101.4(a), 102.23, 102.32, 102.33, 102.37, 102.54 (1988).

- Long lists of ingredients, often in all-capitalized, right-justified text against non-contrasting backgrounds, discourage all but the most determined label readers.

> **INGREDIENTS: WHEAT FLOUR, SUGAR, SHORTENING (CONTAINS ONE OR MORE OF THE FOLLOWING: HYDROGENATED SOYBEAN OIL AND/OR COCONUT OIL AND/OR BEEF FAT), CORN SYRUP, DEXTROSE, GUM ARABIC, SALT, HYDROLYZED VEGETABLE PROTEIN, FARM FRESH EGGS, ARTIFICIAL COLOR (INCLUDING YELLOW #5) AND FLAVOR, THIAMINE MONONITRATE, PYRIDOXINE HYDROCHLORIDE, FRESHNESS PRESERVED WITH BHT.**

Current Ingredient Labels Can Be Difficult to Understand

Regulatory and Legislative Status

Regulatory agencies and Congress have failed to improve ingredient labeling.

- In its 1979 labeling policy review, FDA said it would soon make broad changes to assure labeling of 97-98% of ingredients in standardized foods.[80] Ten years later, FDA has changed labeling requirements only in the particular standards that it has had occasion to review or revise for other reasons. Amendments of federal law to require labeling of all mandatory and optional ingredients have been introduced in Congress, but have never been enacted.

- FDA has abandoned its earlier resolve to grapple with the problem of "and/or" oil labeling. In the 1979 labeling policy review, FDA and USDA said they intended to prohibit this labeling on all foods that contain significant amounts of fat (10% or more fat by dry weight), a change that would have covered most crackers, cookies, and imitation cheeses.[81] FDA still has not made that change. Furthermore, FDA has not acted on CSPI's

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[80] Federal Register, Vol. 44, p. 75,997 (1979).

[81] Ibid., pp. 75,998-99.

1986 petition to prohibit "and/or" labeling.[82]

Recommended Reform

• Require that labels of standardized foods list all ingredients. Require ingredient labels for all foods to identify the ingredients of any standardized foods that are contained in the product.

• Require ingredient labels to state the percentage by weight of major ingredients -- those that comprise 5% or more of the total weight. Require all sugar ingredients to be grouped for these purposes (e.g., "Sugars 50% (sugar, corn syrup, dextrose)").

• Require ingredient labels to list only the fats and oils actually used in the particular product.

• Design a more user-friendly ingredient labeling format, such as requiring upper- and lower-case letters, ragged right margins, and contrasting colors.

MAJOR INGREDIENTS: **Sugars 50% (sugar, corn syrup, dextrose), White flour (30%), Hydrogenated soybean oil (10%), Coconut fat (5%; a saturated fat).**

OTHER INGREDIENTS: **Gum arabic, Salt, Hydrolyzed vegetable protein (contains MSG), Egg, Artificial colors including Blue 2 and Yellow 5, Artificial flavors, Vitamins B-1 and B-6, BHT (preservative).**

Improved Ingredient Label

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[82] See Part II. B.

PART V: ECONOMIC IMPACT OF FOOD LABELING REFORM

Food labeling reform is a healthy ounce of prevention worth many pounds of cure, in both health and economic terms.

The Costs of Diet-related Diseases

Each year, diet-related diseases lead to hundreds of thousands of deaths and cost tens of billions of dollars in health care and lost productivity. The Surgeon General estimates that heart diseases cause 510,000 deaths, and cost $49 billion. Cancers inflict 476,000 deaths and cost $72 billion. Strokes cause 149,000 deaths and cost $11 billion.[83]

We share these costs collectively through insurance premiums and taxes that help pay medical expenses. For example, when a person survives the first encounter with a diet-related disease, the treatment costs that we pay in insurance premiums and taxes become a social investment in that person's future health. We squander that investment whenever the benefits of, say, a $30,000 coronary bypass operation, are lost due to public policies, such as food labeling rules, that hinder the patient from maintaining a diet that helps prevent the disease from recurring. The human costs are of course much larger.

Benefits of Food Labeling Reform

Food labeling reform will have clear economic benefits. While these benefits are difficult to quantify, there is no doubt that better labeling will guide adults toward foods that reduce the risks of developing diet-related diseases, and thus reduce medical costs, lost productivity, and lost income due to premature death or disability. As FDA surveys have indicated, Americans are aware of the diet/disease link, are trying to modify their diets, but have difficulty choosing the most healthful foods because of inadequate food labeling.

Improved labeling also helps the market system operate properly. As consumers become increasingly able to choose more healthful foods, a more rational market will develop, and manufacturers will tend to produce more healthful foods. This development will, in time, lead to improvements in the public's health.

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[83] Surgeon General's Report, pp. 4-5, 180.

The Costs of Labeling Reform, in Perspective

The economic costs to industry and consumers of labeling reform -- a *preventive* measure -- are orders of magnitude below the amounts Americans currently pay *after the fact* for diet-related disease. For example, FDA estimated the first-year cost of adding sodium information to the nutrition label -- a reform requiring a label change on about half of all FDA-regulated foods -- at not quite $15 million, and annual costs thereafter at $0.5 million.[84] FDA's estimated cost of the agency's proposed cholesterol labeling rule -- affecting only those companies that choose to highlight cholesterol or saturated fat content -- is $1.1 million for the first year, and $32,000 annually thereafter.[85] The FDA determined that both labeling reforms were not "major rules" requiring detailed economic analysis and that they did not impose any substantial burden on small businesses. For most labeling reforms, monitoring the nutrient content and changing the label once reflect the lion's share of all costs.

Nor is labeling reform burdensome for taxpayers. FDA's entire budget of $132 million for all food regulation and enforcement activity[86] -- including not just labeling but regulation of food additives and contaminants, testing and inspections, and responding to emergencies -- barely exceeds 50 cents per person per year. The additional cost of policing more complete nutrition and ingredient labels on all foods would be minimal.

The minimal costs of labeling reform are also distributed more efficiently and humanely than in the health lottery that currently apportions suffering and expenses. The food industry pays the costs of modifying labels, then passes on to consumers as much of these costs as the market will bear. The marketplace then spreads these costs as efficiently as possible, through tiny, almost infinitesimal price increases to all who buy food.

Even a small public health benefit from some labeling reforms would justify their entire cost. If sodium labeling reduced stroke-related costs by just over 1/10% the first year (and 1/250% each year thereafter), that savings would cover the entire cost of that rule. Similarly, preventing the heart-attack death of *one* 40-year-old person earning $40,000 per year (even assuming no salary increase until retirement at age 65) would save $1 million in lost productivity and income alone, approaching the *total* cost of the FDA's proposed cholesterol labeling rule.

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[84] Federal Register, Vol. 47, pp. 26,580, 26,587-88 (1982).

[85] Federal Register, Vol. 51, pp. 42,584, 42,591-92 (1986).

[86] "Center for Food Safety Gets $5.9 Million Increase," Food Chemical News (Oct. 10, 1988), p. 22.

The costs of labeling changes are not only minimal compared to health-related costs, but downright trivial by other yardsticks:

- Per consumer: The estimated $15 million first-year cost of sodium labeling, if entirely passed on to consumers, represents well under a dime per American.

- Per company: FDA estimated that label modifications required by its cholesterol proposal would cost an average of $4,000 -- $960 for small companies.[87]

- Per food dollar: FDA estimated that during the first year, the sodium labeling rule would cost one-hundredth of one cent for every dollar consumers spend on FDA-regulated food.[88]

- Compared to advertising costs: Food companies spent $4.3 *billion* for advertising in 1986.[89]

Finally, agencies can lighten the burden of labeling changes by setting "uniform compliance dates" on which all labeling changes made over a preceding period go into effect. For example, all changes finalized by FDA between January 1, 1988, and January 1, 1990, will become effective January 1, 1991.[90] Manufacturers could consolidate all reforms required in a single label change, which would cost just a fraction of the expense of separate label changes. Many companies also regularly change labels for marketing reasons and could make any FDA-required modifications to their labels at such times.

Better food labeling is both a health and an economic investment that Americans can no longer afford to forego.

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[87] Federal Register, Vol. 51, pp. 42, 591-92. (1986).

[88] Federal Register, Vol. 47, pp. 26,587-88 (1982).

[89] "1986 national ad spending by category," Advertising Age (Sept. 24, 1987), p. 165.

[90] Federal Register Vol. 53, p. 44,861 (1988).

Senator METZENBAUM. The hearing stands adjourned. Thank you very much, all of you.

[Whereupon, at 12:30 p.m., the committee was adjourned.]

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